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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
LOCAL RULES

Preliminary Draft
Prepared June 3, 2009

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N.D.W. Va. LBR 1001-1 – Citation to Rules

These Local Bankruptcy Rules are to be cited as the "Local Bankruptcy Rules" or as N.D.W. Va. LBR _____-__.

PART I - COMMENCEMENT OF CASE; PROCEEDINGS RELATED TO THE PETITION

N.D.W. Va. LBR 1002-1 – Petition

(a) General.

A voluntary or involuntary case is commenced by filing a petition with the Clerk of the Bankruptcy Court together with the required filing fee. A voluntary petition shall conform substantially with Official Form No. 1, and an involuntary petition shall conform substantially with Official Form No. 5. A separate petition must be filed by each entity seeking an order for relief, except in the case of a joint petition being filed by an individual and such individual's spouse.

(b) Disclosure of Previous Bankruptcy Petitions

1. If a petition indicates that the debtor has filed a previous bankruptcy in the last eight years, the debtor shall disclose the Chapter under which relief was sought,

and whether discharge was granted, denied, revoked, or not entered, as applicable.

2. In the event that it appears to the Clerk or the Court that the debtor may have filed a prior bankruptcy, or received a prior discharge, within the time prescribed by the Bankruptcy Code for prohibiting entry of a discharge in the present case, the Clerk or the Court may make an entry in the case that no discharge is to be entered, or cause the matter to be set for hearing for a determination of whether the debtor is entitled to obtain a discharge in the present case.

(c) Petition Pursuant to a Power of Attorney

1. When a petition is signed on behalf of the debtor by a person pursuant to a power of attorney, the following is required:

(A) The power of attorney must be:

(i) A general power of attorney authorizing the attorney-in-fact to take action which the debtor could take, or

(ii) A special power of attorney specifically authorizing the attorney-in-fact to file the petition;

(B) The power of attorney must be valid under applicable non-bankruptcy law; and

(C) A copy of the power of attorney must be filed with the petition.

N.D.W. Va. LBR 1002-2 – Notice to Individual Debtors of Chapters Available Under the Bankruptcy Code

(a) Section 342(b) of the Bankruptcy Code provides that "[b]efore the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give to such individual written notice containing– (1) a brief description of – (A) chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each of those chapters; and (B) the types of services available from credit counseling agencies; and (2) statements specifying that– (A) a person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a case under this title shall be subject to fine, imprisonment, or both; and (B) all information supplied by a debtor in

connection with a case under this title is subject to examination by the Attorney General."

(b) To comply with this requirement, the Clerk is directed to provide such notice on approved forms and to make such notice available to any member of the Bar that files bankruptcy cases.

(c) Counsel shall file with the petition a copy of the § 342(b) notice.

N.D.W. Va. LBR 1002-3 – Chapter 11 Petition Filing – Pre-Filing Notice

Barring exigent circumstances, counsel for a Chapter 11 debtor shall contact the Clerk and the United States Trustee at least 48 hours before the filing of the petition if counsel anticipates filing motions on which the debtor expects to seek immediate relief. Counsel shall not be required to disclose the identity of the debtor.

N.D.W. Va. LBR 1002-4 – Voluntary Petition for Business Entities

(a) A person filing a bankruptcy case for a partnership must file a certificate with the petition stating that the filing is authorized by the entity's partnership or operating agreement. In the absence of an applicable partnership or operating agreement, written consent of all general partners shall be filed with the petition.

(b) A person filing a bankruptcy case for a limited liability company must file a certificate with the petition stating that the filing is authorized by the company's operating agreement. In the absence of an applicable operating agreement, written consent of all those with management authority shall be filed with the petition.

(c) A person filing a bankruptcy case for a corporation must file with the petition a resolution by the board of directors authorizing the filing of the bankruptcy petition.

(d) A bankruptcy case for a business entity may only be filed by an attorney.

N.D.W. Va. LBR 1006-1 – Fees

(a) General

1. Filing fees for cases filed under Chapter 7, 9, 11, 12, and 13 of the Bankruptcy Code are prescribed by the Judicial Conference and may be found in 28

U.S.C. § 1930. A copy of the current fee schedule is available on the court's website: www.wvnb.uscourts.gov. The filing fee may be paid in cash, cashier's check, certified check, or negotiable money order payable to "Clerk, United States Bankruptcy Court." Only counsel may pay filing fees by credit card. Payment by counsel's check will be accepted only if the check is drawn on the account of the attorney for the debtor, or on the account of a law firm of which the attorney for the debtor is a member, partner, associate, or of-counsel. The Clerk may refuse to accept personal checks, checks from an attorney filing their personal petition, and may also refuse to accept a check from any person who is known by the Clerk to have previously presented a check that was subsequently refused for payment or otherwise dishonored.

2. An attorney or a trustee may file a motion with the Court to request a refund of fees paid. The motion must contain a complete explanation as to why the payment should be refunded. Available grounds for the Court to authorize a refund include: (A) paying a fee for filing a duplicate document, bankruptcy petition, or adversary proceeding; (B) paying a fee for filing a document in the wrong case or proceeding; (C) paying a fee when the movant is entitled to an exemption from paying the filing fee; or (D) paying a fee when the paying party is eligible for a deferral of the filing fee in a case in which no funds from the estate exist for the payment of the filing fee.

3. On order of the Court, the Clerk shall refund the payment.

(b) Installment Payments

1. Applications to pay the filing fee in installments shall substantially conform to Official Form 3A. The Application should propose to pay the filing fee in three equal monthly installments; provided, however, that the Clerk has the discretion to approve a different payment schedule proposed by a debtor. In no event may the Clerk approve a schedule of payments that exceeds 120 days. Installment payments are due on the same day of the month as the date on which the petition was filed. If that day falls on a day that the Court is closed, payment is due not later than on the next business day. The Clerk shall enter the Order approving the payment of filing fees in installments. In the event that installment payments are not timely made, the Clerk shall submit an order

to the Court dismissing the case.

2. A debtor shall not receive a discharge until the entire filing fee is paid. In the event a case is dismissed before the entire filing fee is paid, the Clerk is authorized to collect the unpaid fee upon the filing of a new bankruptcy case.

N.D.W. Va. LBR 1007-1 – Lists, Schedules, Statements, & Other Documents

(a) Initial pleadings

1. The initial pleadings shall consist of the documents listed in Appendix A, filed with the court in the order in which they are listed.

(b) Failure to File a List, Schedule, Statement, or Other Document

The failure to file a required List, Schedule, Statement, or other document may result in the administrative, or automatic dismissal of the case in accordance with N.D.W. Va. LBR 1017-2.

(c) Motion to Extend Time

A motion to extend the time for filing any required List, Statement, Schedule, or Other Document required by these Rules may be granted by either the Clerk or the Court ex parte. Motions for extension of time for filing schedules, statements, and/or lists shall specifically state the grounds on which the extension is sought. If the document is one specified under Fed. R. Bankr. P. 1007(b), then the proposed order accompanying the motion shall provide that such schedules, statements, or other document shall be filed no later than 7 days before the date first set for the § 341 meeting. Both the case trustee, if assigned, and the United States trustee will receive electronic service of the motion and order without the need for further service by the moving party.

N.D.W. Va. LBR 1007-2 – Payment Advices; Self-Employed or Unemployed

(a) If the debtor did not receive any payment from any employer during the 60 days before the filing of the petition, or any portion of that 60-day period, a sworn statement to that effect signed by the debtor shall be filed with the petition.

(b) If the debtor was self-employed during the 60 days before the filing of the

petition, or any portion of that 60-day period, a sworn statement to that effect signed by the debtor shall be filed with the petition. The statement shall show the amount of gross and net income received by the debtor in the 60 days before the filing of the petition, itemized to show how the amount is calculated.

N.D.W. Va. LBR 1007-3 – Mailing Matrix

(a) The debtor must file with a voluntary petition a master mailing matrix containing the names and addresses of the debtor and all creditors. The matrix should be alphabetized by the name of the creditor. In a case under Chapter 11, the debtor must include in the matrix the taxing authority for each county in which the debtor holds an interest in real estate. The mailing matrix for every bankruptcy petition shall be submitted in electronic media form; provided, either the Clerk or the Court may permit the matrix to be filed in any other form. Errors that the debtor discovers on a mailing matrix must be promptly corrected. By virtue of filing the mailing matrix, the debtor and/or debtor's counsel is certifying that the matrices are accurate and complete to the best of counsel's or the debtor's knowledge, information, and belief.

(b) In the event that a party amends the schedules to add a creditor or change the address of an existing creditor, counsel shall ensure that the creditor's name and address appears on the mailing matrix.

(c) On conversion of a case to another chapter under title 11, the debtor must file, at the same time of the filing of the motion for conversion, an alphabetized matrix containing the names and addresses of any additional creditors to be included in the bankruptcy case.

N.D.W. Va. LBR 1007-4 – Personal Information and Identifiers

(a) In cases filed electronically using electronic case upload, the debtor's signature declaring under penalty of perjury that information in the petition is true and correct applies to the debtor's social security number as filed electronically with the petition. When the petition and schedules are filed electronically, the debtor's attorney shall retain a signed paper copy of Official Form 21 (or a copy of a form similar in nature

which provides all information required by Official Form 21), for a period of one-year after the case or proceeding is closed. No additional statements or verifications of the debtor's social security number in either paper or electronic format shall be filed if the petition is filed electronically using case upload.

(b) When the petition and schedules are not filed electronically using electronic case upload, the debtor, or the debtor's attorney, shall file a completed Official Form 21, or a form similar in nature which provides all information required by Official Form 21, as a separate paper document with the Clerk at the same time the debtor or the debtor's attorney files the petition. When the case is not filed electronically, the debtor, or the debtor's attorney, shall retain a signed paper copy of this form for a period of one-year after the case or proceeding is closed.

(c) When an involuntary petition is filed, the debtor or the representative of the debtor shall file a verified statement of social security number within 14 days of the date of the filing of the involuntary petition.

(d) The Clerk shall maintain Official Form 21 in files that are not accessible to the public. The Clerk may, at the Clerk's discretion, reduce these paper documents to electronic format. If reduced to electronic format, the Clerk shall store these files in a secure location that is not accessible to the general public.

(e) The privacy policy of the federal judiciary restricts the publication of certain personal data in documents filed with the court. The policy requires limiting Social Security and financial account numbers to ***only*** the last four (4) digits, in addition to allowing only initials for the names of minor children and permitting only the year of birth to be disclosed rather than the entire birth date. The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Clerk will not review each document for compliance with this rule.

N.D.W. Va. LBR 1009-1 – Amendments to Lists & Schedules

(a) General

1. Any amendments to schedules, statements, or lists must be verified by the debtor and filed with the court. Each amendment of schedules or lists shall be by

separate document and shall not be combined with a plan modification or other document. Any amendment that seeks to add a creditor shall disclose the date that the debt arose.

2. The debtor must serve the amendments to the schedules, matrices and/or statements, on the affected entities, the United States trustee, and the trustee in the case. The debtor must also file a certificate of service with the court.

3. Where the debtor adds creditors to the case by amending the schedules or the list of creditors previously filed, the debtor shall serve upon each newly-listed creditor a copy of the following:

A. The amendment

B. The notice of the meeting of creditors

C. The order granting discharge (if any)

D. Any other document affecting the rights of said creditor; and

E. In Chapter 11 cases, notice of the claim's bar date

4. Amendments that do not conform to these criteria may be deemed ineffective according to law.

(b) Amendments in Closed, "No Asset" Chapter 7 Cases

Closed cases in which there has been no distribution to the unsecured creditors ("no asset" cases) will generally not be reopened for the purpose of adding creditors who were omitted from the original filing. Debts owed to these creditors, unless otherwise excepted from discharge under 11 U.S.C. § 523, are discharged by operation of law.

(c) Extension of Deadlines for Discharge and Dischargeability Complaints

When a creditor is added to the debtor's schedules or lists after the date first set for the meeting of creditors under 11 U.S.C. § 341, then the deadlines for filing an action to except a debt from discharge and for objecting to entry of discharge are extended with respect to the newly added creditor as follows:

1. The time for filing an action to except a debt from discharge is unchanged, and such actions may be filed within the time proscribed by Fed. R. Bankr. P. 4007(b), and/or 11 U.S.C. §§ 523(a)(3).

2. A complaint objecting to entry of a debtor's discharge under § 727 may be filed:

A. If the debtor files the amended schedule or list when less than 30 days remain before the expiration of the deadline set forth in Fed. R. Bankr. P. 4004(a) (60 days after the date first set for the meeting of creditors), then the deadline for the creditor to object to the entry of the debtor's discharge shall be extended 30 days from the date of the filing of the amended schedule or list;

B. If the debtor files the amended schedule or list after the deadline set forth in Fed. R. Bankr. P. 4004(a) has passed, but where a discharge has not yet been entered, the newly added creditor shall have 30 days to file a complaint objecting to discharge. The Clerk is authorized to delay entry of discharge for a period of 30 days any time a debtor files an amended schedule or list that adds a creditor.

C. If the debtor files the amended schedule or list after the entry of discharge, the newly added creditor must satisfy the timing requirements set forth in 11 U.S.C. § 727(e) to revoke entry of the discharge of a debtor under the grounds stated in § 727(d).

N.D.W. Va. LBR 1014-1 – Divisions of Bankruptcy Court

(a) The United States Bankruptcy Court of the Northern District of West Virginia is currently a one-judge District and it is the proper venue for cases in which the debtor's residence is in one of the thirty-two (32) following counties:

Wheeling Division	Martinsburg Division
Brooke	Berkeley
Hancock	Hampshire
Marshall	Jefferson
Ohio	Mineral
Tyler	Morgan
Wetzel	

Clarksburg Division	Elkins Division
Braxton	Barbour
Calhoun	Grant
Dodridge	Hardy

Gilmer
Harrison
Preston
Marion
Monongalia
Pleasants
Ritchie
Taylor
Lewis
Pendleton
Pochontas
Randolph
Tucker
Upshur
Webster

(b) The Northern District of West Virginia includes four (4) divisional offices located in the cities of Wheeling, Clarksburg, Elkins, and Martinsburg. The Bankruptcy Court is not bound by the divisional delineations of the District Court, and may, in the interests of the parties and the court, conduct hearings and other proceedings at any of its divisional locations regardless of the division in which the case was filed.

(c) All pleadings and other papers not filed electronically shall be filed with the Clerk of the Bankruptcy Court at either the Wheeling or Clarksburg division as follows:

U. S. Bankruptcy Court
1125 Chapline St.
Post Office Box 70
Wheeling, WV 26003

U. S. Bankruptcy Court
324 West Main St.
Clarksburg, WV 26301

N.D.W. Va. LBR 1014-2 Filing Out of Venue

The Court will accept cases filed in this District when this District is not the proper filing venue. In such a case, the debtor shall file a motion with the petition to allow the bankruptcy filing to proceed out of venue. The motion shall state the reasons why the case is being filed in this District, and contain a statement that no party would appear to be inconvenienced or harmed by filing the petition out of venue. Notice of the motion shall be served on all parties in interest, and if no objection is timely filed within the time allowed by the Clerk, venue will be deemed proper in this District. Should any timely written objection be filed by a party in interest, the court may, either sua sponte or after notice and a hearing, overrule the objection, dismiss the case, or transfer the case to any other district in the interest of justice or for the convenience of the parties.

N.D.W. Va. LBR 1015-1 – Joint Administration / Consolidation

(a) General

In all joint petitions filed with the Court, the case will be administered through joint administration of the estates without further Court order unless the trustee or other interested party files an objection to joint administration within 30 days after the conclusion of the first meeting of creditors.

(b) Related Cases

If venue is otherwise proper in the Northern District of West Virginia, except as otherwise provided in N.D.W. Va. LBR 1014-2, a petition involving a related case shall be filed in this district, and where possible, the same division of court where the first related case was filed. Related cases include cases in which the debtors are: (A) identical individuals or entities; (B) a corporation and any major shareholder thereof; (C) affiliates; (D) a partnership and any of its general partners; (E) an individual and his or her general partner or partners; (F) an individual and his or her spouse; or (G) entities having substantial identity of financial interests or assets.

(c) Joint Administration or Substantive Consolidation

1. A party desiring to have two or more bankruptcy cases consolidated administratively or substantively shall file a written motion requesting consolidation. Objections shall be filed within the time set by the Clerk's office.

A. Cases jointly administered or substantively consolidated will share a joint mailing matrix which shall be filed by the party seeking consolidation. The consolidated mailing matrix is due within ten days of the date of the order granting the consolidation.

B. In jointly administered or substantively consolidated cases, one case will be designated as the lead case. All pleadings, orders and notices will be docketed in the lead case only, with the exception of proofs of claim. An entry will be made in each member case indicating the consolidation and designating the lead case. Any pleading, order, or notice that is filed in the consolidated cases, shall contain the case caption and case number of the lead case first. The case caption shall also include the names and bankruptcy numbers of all member cases, and the style of any pleading, order or notice shall also include in parentheses "(Substantively Consolidated)" or "(Jointly Administered)" as follows:

IN RE:	)	
	)	
ABC, INC.,	)	Case No. 08-1234 (Lead Case)
	)	
ALPHA, LLC, BETA, LLC, CAPA, LLC	)	Case Nos. 08-1235, 08-1236, 08-1237
	)	(Jointly Administered)

C. A separate claims register will be maintained for the docketing and filing of all proofs of claim filed in the lead and member cases.

D. The Court may, by administrative order, *sua sponte*, or upon a motion of a party, modify the rules and procedures applicable to joint administration or substantive consolidation.

N.D.W. Va. LBR 1017-1 – Dismissals or Conversion of Case; Suspension

(a) Voluntary Dismissal

1. A debtor's motion to dismiss a voluntary case, or a petitioning creditor's motion to dismiss an involuntary case, shall state the reason for requesting dismissal with particularity and shall disclose any agreement involving the debtor, any creditor, or other party in connection with the motion or the case. A voluntary dismissal of a Chapter 13 case will be noticed to parties in interest to ascertain whether any party wishes to condition the dismissal under 11 U.S.C. § 349.

2. Dismissal may be conditioned on the payment of expenses and fees, including quarterly fees due to the United States Trustee.

(b) Dismissal of Case for Failure to Prosecute

1. If it appears to the Clerk or the Court that no activity is taking place in a case under Chapter 7, 11, or 12 of the Bankruptcy Code, the Clerk or the Court may issue a 30-day notice pursuant to Fed. R. Bankr. P. 2002(a)(4) that the case may be dismissed for non-prosecution.

2. If no party timely responds to the notice of dismissal for non-prosecution, the Clerk is authorized to submit an appropriate order to the Court dismissing the case.

N.D.W. Va. LBR 1017-2 – Dismissal of Petitions & Striking or Denying Related

Papers

(a) Administrative Dismissal of Petitions

1. When the Clerk determines that there is a deficiency in a petition or associated paper, the Clerk may issue a notice of deficient filing specifying the deficiency and stating that the petition or associated paper may be dismissed, stricken, or denied, as the case may be, if the deficiency is not corrected within the time designated by the Clerk. Deficiencies on which the Clerk may issue a notice include, but are not limited to:

A. The petition is not signed by the debtor;

B. The party filing the petition neither pays the prescribed filing fee with the petition, nor files with the petition an application to pay the required fee in installments, nor files an application requesting waiver of the filing fee if required to do so;

C. The debtor does not file a master mailing matrix with the petition;

D. A Chapter 11 debtor does not file the list of the twenty largest unsecured creditors with the petition;

E. The petition is submitted by a debtor who is not an individual and is not represented by an attorney who is a member of the bar of the District Court;

F. The petition is submitted by a person who, under either 11 U.S.C. § 109(g), or an order of court, may not be a debtor at the time of the submission of the petition;

G. A voluntary petition is filed without the debtor's social security number being provided;

H. In a case for individuals, the credit counseling certificate or request for waiver pursuant to 11 U.S.C. § 109(h)(4) is not filed, and the debtor has not checked a block on Exhibit D to the petition (Form B1, Exhibit D) stating that the debtor received approved budget and credit counseling services, or that a waiver of such requirement is applicable.

2. If the debtor files a response to the notice of deficiency, the Clerk shall refer the case to the Court for further determination.

3. If the noted deficiency is not corrected within the time prescribed by the Clerk, and if no response has been filed by the debtor, the Clerk shall submit an order to the Court dismissing the case.

(b) Automatic Dismissal of Petitions

1. If the debtor in a Chapter 7 or Chapter 13 case is an individual, upon the filing of a notice that a debtor has not provided a copy of the debtor's federal income tax return pursuant to 11 U.S.C. § 521(e)(2), an order of dismissal may be entered after notice and an opportunity for a hearing sent to the debtor, counsel to the debtor, and the United States Trustee.

2. Any party seeking a determination on the issue of whether a case should be automatically dismissed due to a debtor's alleged failure to file all information required under § 521(a)(1), must file a § 521(i) motion to dismiss within 75 days of the date the case is filed. Failure to timely file the § 521(i) motion bars a party from later asserting that the matter was, or should have been, automatically dismissed.

N.D.W. Va. LBR 1019-1 – Conversions

(a) Motion to Convert

A motion to convert from one chapter to another chapter of the Bankruptcy Code shall be in writing, state with particularity the reason for conversion, state whether the case has been previously converted, and be served on the trustee, if any, the United States trustee, all creditor and other parties in interest, and any committee. If no timely objection to the motion is filed pursuant to N.D.W. Va. LBR 9013-1, then the court may enter an order converting the case without a hearing; provided, however, that the court may *sua sponte* convert a Chapter 12 or a Chapter 13 case to one under Chapter 7 without notice pursuant to Fed. R. Bankr. P. 1017(f)(3).

(b) Effect of Conversion on Pending Motions

A conversion of a case to another Chapter does not terminate a pending motion. On conversion, every effort should be made to inform the case trustee of the status of pending motions. In the event that the trustee has inadequate time to respond to a pending motion under the court's motion practice procedures set forth in N.D.W. Va.

LBR 7007-1 and 9013-1, the court may delay entry of a proposed order, or grant the trustee relief from judgement under Fed. R. Bankr. P. 9023 and/or 9024.

(c) Additional Procedures on Dismissal or Conversion of a Pre-Confirmation Chapter 12 or Chapter 13 Case

1. Upon the pre-confirmation dismissal or conversion of a Chapter 12 or 13 case, the Clerk will send a notice to parties in interest that the Chapter 13 trustee may be holding pre-confirmation funds paid to the trustee by the debtor, out of which certain specified categories of creditors may be entitled to receive payment.

2. Creditors may, within the time prescribed by the Clerk, file an application with the Court to receive payment from the funds being held by the trustee. Notwithstanding a failure of a creditor to file an application for payment, the trustee is authorized to pay the following creditors:

A. Creditors scheduled in a lease of personal property for that portion of the obligation that becomes due after the order for relief;

B. Creditors holding an allowed claim secured by personal property to the extent the claim is attributable to the purchase of such property of the debtor for that portion of the obligation that becomes due after the order for relief, and to the extent that the payment is necessary to provide such creditor with adequate protection;

C. Unpaid claims allowed under section 503(b); and

D. Lessors of personal property and allowed purchase-money secured claim holders that are due payments pursuant to any court order under § 1326(a)(3) modifying, increasing, or reducing payments required under § 1326(a)(1)(B) and (C).

3. If a creditor files an application for payment, parties in interest shall have ten days to file an objection to the application; provided, however, that the Chapter 13 trustee may object to the application and request a hearing on the application at any time before entry of the final report.

4. The debtor may, within the time prescribed by the clerk pursuant to subsection (c)(1), file an objection to the trustee paying any creditor in the absence of an application pursuant to subsection (c)(2).

5. The balance of the funds being held by the trustee after authorized payments to creditors shall be remitted to the debtor.

(d) Additional Procedures in Dismissal or Conversion of a Chapter 12 or Chapter 13 Case After Confirmation

If there is a confirmed plan in the case, the trustee shall disburse any funds received before the conversion or dismissal of the case pursuant to the terms of the plan. All funds received thereafter shall be disbursed to the debtor.

N.D.W. Va. LBR 1071-1 – Assignment on Recusal or Disqualification

In the event that the bankruptcy judge recuses himself from hearing a case, or if the judge is disqualified from hearing the case, the case may be assigned to another judge outside of this District that is willing to hear the case. (Judge assignments are made within the jurisdiction of the Court of Appeals for the Fourth Circuit and the Clerk first attempts to reassign the case within the State of West Virginia.) Hearings on assigned cases are usually conducted at points of court in the Northern District of West Virginia, but may also be conducted elsewhere.

N.D.W. Va. LBR 1071-2 – Statewide Assignment of Cases

In March 1983, the Judicial Conference of the United States authorized concurrent, State-wide jurisdiction for bankruptcy judges in the Northern and Southern Districts of West Virginia. By agreement between the bankruptcy judges between the Northern and Southern Districts of West Virginia, each judge may assign cases filed within the judge's district to a judge of the other district as the press of business, workload, or interests of justice dictates. Unless otherwise ordered by the court, pleadings will be filed and the case file will be maintained in the district where the case originated.

N.D.W. Va. LBR 1074-1 – Corporations.

(a) No corporation or entity other than an individual shall file a petition, nor shall it appear as a debtor in any case or proceeding, unless it is represented by an attorney,

except that officers or agents of a corporation may sign and file proofs of claim without legal representation.

(b) A copy of the duly attested corporate resolution or other appropriate authorization of the filing of a voluntary petition shall be filed by the debtor with the petition.

(c) The individual occupying the position of chief executive officer, or the individual who has most recently served in that capacity if no such individual is serving in that capacity as of the date of the petition, shall be responsible for any and all acts required by the Bankruptcy Code or the Bankruptcy Rules to be performed by a debtor corporation, and shall attend on behalf of the debtor any examination, meeting or hearing unless the Court orders otherwise. Said individual is to be identified by name in a separately filed document within fifteen days of the filing of a petition, or within fifteen days of the entry of the order for relief in an involuntary case.

PART II – ADMINISTRATION

N.D.W. Va. LBR 2002-1 – Notice to Creditors & Other Interested Parties.

(a) Service of Notice & Hearing Dates

1. Unless otherwise provided in these Rules, the Clerk shall provide notice of an objection period for all motions filed, and/or set all hearing dates consistent with N.D.W. Va. LBR 9013-1. Notwithstanding the foregoing, the Clerk or the Court may require that counsel for an applicant or movant serve or transmit the required notices to the parties entitled to receive notice.

2. The Clerk is authorized to remove from the mailing matrix any address to which notice was sent and returned to the Clerk as undeliverable.

3. In Chapter 7 cases, a party required to give notice pursuant to Fed. R. Bankr. P. 2002(a) is permitted to limit notice as provided under Fed. R. Bankr. P. 2002(h).

(b) Preferred Creditor Address

An attorney required to serve a notice or order on behalf of the court must access the correct creditor address through the creditor mailing matrix maintained by the Bankruptcy Court. This list will include all addresses which have been provided by

creditors pursuant to 11 U.S.C. § 342(e) and (f). An attorney may access the court mailing matrix through the ECF system.

(c) Educational Loans – Service on the United States Attorney

If the United States has guaranteed an educational loan, the debtor shall serve a copy of the summons and complaint under 11 U.S.C. § 523(a)(8), pursuant to Fed. R. Bankr. P. 7004, on the United States Attorney in Wheeling, West Virginia, the Attorney General in Washington, D.C., and on the appropriate agency. Appropriate addresses may be obtained by calling the U.S. Attorney's Office in Wheeling.

(d) Notice by Publication

1. All notices requiring advertisement shall be published at least once unless otherwise required by rule, statute, or order. The notice shall be published in newspapers of general circulation. Newspapers of general circulation include, but are not limited to:

A. In proceedings at Wheeling, in the Wheeling Intelligencer, or Wheeling News-Register;

B. In proceedings at Clarksburg, in the Clarksburg Exponent;

C. In proceedings at Elkins, in the Inter-Mountain, or Randolph County News;

D. In proceedings at Martinsburg, in the Journal News;

2. All notices shall be published at least six business days before requiring any action, and a longer notice shall be given when required by rule or statute, or where required by the Court.

N.D.W. Va. LBR 2003-1 – Meeting of Creditors & Equity Security Holders.

(a) Scheduling

The United States Trustee shall be responsible for scheduling the date, time and place of the 11 U.S.C. § 341 meeting of creditors.

(b) Duty to Appear

The debtor or, in a case of a partnership or corporation, a designated representative of the partnership or corporation must attend the § 341(a) meeting.

When spouses have filed jointly, the Code requires both debtors to be present at the § 341(a) meeting.

(c) Continuances

1. Continuances of § 341(a) meetings are not mandated by the Bankruptcy Code and should be granted only under exceptional circumstances.c A request for continuance should be directed to the case trustee, or in a chapter 11 case, the United States Trustee.cc A motion for continuance of the meeting of creditors should not be filed with the court unless the debtor is of the opinion that the request for continuance was unfairly denied.

2. If the debtor fails to appear at the first meeting of creditors, the trustee may continue the meeting to the next docket or may move to dismiss the case.

3. If a trustee continues the meeting, the trustee shall announce the continued date and time to all parties present at the initial meeting, and the debtor's attorney shall give notice to all parties of the continued meeting. Debtor's counsel shall file with the court the notice and a certificate of service. cIf the debtor does not appear at a continued or rescheduled meeting, the case may be dismissed upon motion and notice by the trustee or United States Trustee.

4. Any continued or rescheduled meeting should be held before the time for objection to discharge has expired unless the trustee has obtained an extension of time to object to the debtor's discharge.

(d) Appearance for Meeting of Creditors

1. Debtors must appear in person before the trustee at the § 341(a) meeting except in rare circumstances. The trustee or the United States Trustee may approve the debtor's alternative appearance when extenuating circumstances prevent the debtor from appearing in person. Extenuating circumstances may include military service, serious medical condition, or incarceration. In such instances, a debtor's appearance at a § 341(a) meeting may be secured by alternative means, such as telephonically or by interrogatories. If the meeting is conducted by alternative appearance, the debtor must comply with all other rules regarding meetings of

creditors.

2. Debtor's counsel should notify the trustee and United States Trustee in advance of any disability, such as hearing impairment or limited English proficiency, so that reasonable accommodation can be made.

(e) Waiver of Appearance

1. A debtor's appearance may be waived if the debtor is unable to appear and testify at a meeting of creditors in person or by alternative means because of incapacity, disability or active military duty in a combat zone as these terms are defined in 11 U.S.C. § 109(h)(4).

2. The debtor's appearance may be waived by the United States Trustee upon written request of the debtor and with sufficient documentation of the incapacity, disability or active military duty within 7 days of the scheduled meeting.

3. A third party may not appear for the debtor pursuant to a power of attorney. If a debtor is unable to appear in person, the debtor should request an appearance by alternative means or a waiver of appearance.

(f) Individual Debtor's Duty to Provide Documentation

1. Personal Identification. Every individual debtor shall bring to the meeting of creditors under § 341:

A. A picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity. Acceptable forms of picture identification (ID) include: driver's license, U.S. government ID, state ID, passport (and current U.S. visa, if not a U.S. citizen), military ID, resident alien card, and identity card issued by a national government authority.

B. Evidence of social security number(s) or a written statement that such documentation does not exist. Acceptable forms of proof of social security number include: social security card, medical insurance card, pay stub, W-2 Form, IRS Form 1099, and Social Security Administration (SSA) Statement.

C. If there is a social security number mistake, the debtor shall submit an amended verified statement (Official Form 21) with the correct full social security

number to the clerk, with notice of the correct number to all creditors, the United States Trustee, and the trustee. In addition, the debtor shall file a truncated or redacted copy of the notice, showing only the last four digits of the social security number, and a certificate of service with the court. Only when a mistake occurs in the last four digits that appear on the petition should the debtor file an amended petition and notice all parties.

2. Financial Information. Every individual debtor shall bring to the meeting of creditors the following documents or copies of them, or provide a written statement that the documentation does not exist or is not in the debtor's possession:

A. Evidence of current income, such as the most recent payment advice, retirement and/or social security statement, disability statement, unemployment statement, etc.;

B. Statements for each of the debtor's depository and investment accounts, including checking, savings, and money market accounts, mutual funds and brokerage accounts for the time period that includes the date of the filing of the petition; and

C. Documentation of monthly expenses claimed by the debtor when required by 11 U.S.C. § 707(b)(2)(A) or (B).

3. Tax Return. At least seven days before the first date set for the meeting of creditors under § 341, the debtor shall provide to the trustee a copy of the debtor's Federal income tax return for the most recent tax year ending immediately before the commencement of the case and for which a return was filed, including any attachments, or a transcript of the tax return, or provide a written statement that the documentation does not exist.

4. Petition and Schedules.c If the petition and schedules have been filed with electronic signatures, the debtor shall bring to the meeting and present to the trustee the petition and schedules bearing the actual signatures of the debtor.

5. Other Documents. Before the § 341(a) meeting, the trustee can ask the debtor to provide documents to corroborate the information contained in the petition, statements, and schedules.c Such documents may include, but are not limited to:

financial statements, loan documents, trust deeds, titles, and insurance policies.

N.D.W.V. LBR 2004-1 – Examinations

(a) Scheduling & Notice

1. Fed. R. Bankr. P. 2004 examinations may be scheduled without motion or order by agreement, or by filing and serving on the party a notice as if scheduling depositions pursuant to Fed. R. Civ. P. 30(b). The Court encourages the use of this procedure. The proponent of a motion for examination shall attempt to arrange a mutually agreeable time, place and date for the examination.

2. Motions for a Fed. R. Bankr. P. 2004 examination may be granted ex parte. On objection, the Court may modify any order.

3. The use of a Rule 2004 examination in connection with an adversary proceeding is discouraged. If an adversary proceeding is filed, counsel should notice a deposition under Rule 7030.

(b) Disputes

1. The Court will not entertain disputes concerning the scheduling and notice of Rule 2004 examinations until the parties have complied with the following:

A. The objecting party has conferred, or made reasonable efforts to confer, and communicated in writing with opposing counsel in a sincere effort to resolve the dispute. Counsel shall certify compliance with this Rule, and detail the efforts to resolve the dispute in the objection.

B. After compliance with paragraph (1)(A), the parties shall request an expedited discovery conference with the Court, which may be by telephone or in person.

2. All other disputes are to be treated as discovery disputes and dealt with in accordance with N.D.W. Va. LBR 7026 and the discovery guidelines in Appendix E.

3. An examination or production dispute as to one matter does not justify delay in taking an examination or responding to other examination or production requests, unless otherwise ordered by the Court.

(c) Copying Expenses

A party in interest requesting copies of documents that were produced for inspection under Fed. R. Bankr. P. 2004 must pay the actual, reasonable costs of copying.

N.D.W. Va. LBR 2014-1 – Employment of Professionals

(a) Application Required

1. Any entity seeking approval of employment of a professional person under 11 U.S.C. § 327, 1103(a), 1114, or Fed. R. Bankr. P. 2014, shall file with the Court an application as set forth below, a supporting affidavit or verified statement of the professional person as set forth in paragraph (c), and a proposed order for approval.

2. Promptly after learning of any additional material information relating to such employment (such as potential or actual conflicts of interest), the professional employed or to be employed shall file and serve a supplemental affidavit setting forth the additional information.

(b) Required Contents of Application

1. Any application for employment as a professional shall conform to the requirements of the Bankruptcy Code and Fed. R. Bankr. P. 2014. Any application shall further state:

A. The professional's customary and proposed hourly rates of compensation or other proposed formula for determining compensation;

B. The amount, date paid, and source of any fees paid to the applicant for a period of one-year before the filing of the petition through the time of the application; and

C. The amount, date paid, and source of any retainer sought or recived by the professional within such period.

(c) Required Contents of Affidavit

1. The affidavit or verified statement of the person to be employed which accompanies the application for employment, in addition to the requirements of Fed. R. Bankr. P. 2014, shall:

A. Set forth any known past or present relationship to the debtor, the trustee, or any creditor or equity security holder of the debtor. For every past or present relationship so disclosed, the applicant shall provide a separate affidavit to the United State Trustee stating the gross revenue received for the proceeding twelve months from any such party where said gross revenues exceed 1% of the applicant's total gross revenues;

B. Establish the lack of any adverse interest to the estate; and

C. Establish that the proposed employment is not prohibited or improper under Fed. R. Bankr. P. 5002

(d) Appraisers, Auctioneers, Brokers, and Real Estate Agents

1. The affidavit or verified statement of an appraiser, auctioneer, broker, or real estate agent shall contain, in addition to the information required in subsection (c), above, the following:

A. A statement that the appraiser, auctioneer, broker, or real estate agent is not an officer or employee of the Judicial Branch of the United States, or in the United States Department of Justice;

B. A statement that gross proceeds of any sale conducted by the auctioneer or real estate agent will immediately be turned over to the trustee or debtor in possession unless otherwise ordered by the Court; and

C. An acknowledgment that the appraiser, auctioneer, broker, or real estate agent will not, under any circumstances, directly or indirectly, purchase or acquire any interest in any of the property being appraised by or sold by that appraiser, auctioneer, broker, or real estate agent.

(e) Service Requirement

An entity moving for the authorization of employment in a proceeding under Chapter 11 of the Bankruptcy Code shall serve the application upon the United States Trustee, any trustee appointed under 11 U.S.C. § 1104, any committee appointed pursuant to § 1102, or, if no committee is appointed, the creditors included on the list filed pursuant to Fed. R. Bankr. P. 1007(d), and any other entity as the court may direct.

(f) Objections to the Application for Employment

Applications for employment are treated as motions under N.D.W. Va. LBR 9013-1 and the time period to object to an application for employment is governed by that Rule. If the application is granted, the retention shall be effective as of the date the motion was filed, unless the Court orders otherwise.

N.D.W. Va. LBR 2015-1 – Reports and Records of Trustees

(a) Chapter 7 Panel Trustees

The Chapter 7 Panel Trustees for this State are set forth in Appendix B to these Local Rules.

(b) Debtor-in-Possession Bank Accounts in Chapter 11

1. Where the debtor uses pre-printed checks, on motion of the debtor, the Court may, without notice and hearing, permit the debtor to use its existing checks without the designation "Debtor-in-Possession." Once the Debtor's existing checks have been used, however, the debtor shall, when reordering checks, require the designation "Debtor-in-Possession" and the corresponding bankruptcy number on all such checks.

2. Except as provided in N.D.W. Va. LBR 4001-3 (Investment in Money Market Funds), no waiver of the investment requirements of 11 U.S.C. § 345 shall be granted by the Court without notice and an opportunity for hearing. Notwithstanding the foregoing, if a motion for such a waiver is filed on the first day of a Chapter 11 case in which there is more than 200 creditors, the Court may grant an interim waiver until a hearing on the debtor's motion can be held.

(c) Chapter 13 Trustee

1. In Chapter 13 cases that are unconfirmed, dismissed before confirmation, or converted to a case under another Chapter before confirmation, the Chapter 13 trustee is authorized to charge an administrative fee of $75.00, and, in addition, the Chapter 13 trustee is authorized to charge the percentage fee authorized for trustee compensation and expenses on any unconfirmed case where the trustee has made authorized disbursements before confirmation.

2. The Chapter 13 Trustees for this District are set forth in Appendix B to these Local Rules.

N.D.W. Va. LBR 2016-1 – Compensation of Professionals

(a) Pre-petition Retainers

1. The disclosure of the amount of any pre-petition retainer for the debtor's professional shall be disclosed with the filing of the petition pursuant to 11 U.S.C. § 329 and Fed. R. Bankr. P. 2016(b). All professionals shall deposit retainers, whether received from the debtor or any other source, in a trust account, and may withdraw and apply funds only after a fee application and order.

(b) Application for Compensation

1. Unless otherwise ordered by the court or allowed by these Local Rules, all professionals seeking compensation from the bankruptcy estate pursuant to 11 U.S.C. §§ 327, 328, 330, and/or 331, including, but not limited to: attorneys, accountants, examiners, investment bankers, financial advisors, or real estate advisors, shall prepare and submit their applications for compensation in a manner that substantially conforms to the guidelines set forth in Appendix C of these Local Rules.

2. Except as provided in subsection (c), no request for payment for post-petition services rendered should be submitted to the debtor until an application for compensation has been approved by the court consistent with these Local Rules.

3. Chapter 7 debtors' attorneys shall not accept post-petition installment payments for attorney's fees charged in the pre-petition period.

(c) When Application for Compensation is Unnecessary

1. When a debtor's total attorney fee for post-petition services is $1,000.00 or less, it is unnecessary to file a further application for compensation and the professional may directly bill the debtor for those post-petition services. The attorney shall disclose the fee to the court by filing a notice with the Clerk.

2. The court may, from time to time, establish a list of presumptive attorney's fees for specific tasks, which are detailed in Appendix D . A debtor's attorney may charge the presumptive fee or less without the necessity of filing an

application for compensation. Any deviation charging an amount higher than the presumptive fee set forth therein shall be disclosed in an application to the court that is supported by detailed time and expense records, even if the total fee is $1,000.00 or less.

(d) Payment of Post-Petition Attorney's Fees in a Chapter 13 Plan

If an attorney for the debtor elects to receive attorney fees, or any portion thereof, for post-petition work through the debtor's Chapter 13 plan, the plan may be amended or modified on approval of the application (where necessary). A post-confirmation modification may be done without notice only when the dividend being paid to unsecured creditors is not affected by the additional attorney's fees.

(e) Chapter 11 Interim Fee Applications

Interim fee applications should not be submitted more than once quarterly. The court has the discretion to order a hold-back on any interim fees approved (generally 15%), which are to be held in trust until an application for final compensation is made by counsel and approved by the court.

N.D.W. Va. LBR 2070-1 – Motions for the Allowance of Administrative Expenses

Motions for the allowance or payment of administrative expenses must be served on the debtor, United States Trustee, any trustee serving in the case, members of any committee in the case or its counsel (if no committee of unsecured creditors has been appointed, to those creditors on the list filed pursuant to Fed. R. Bankr. P. 1007(d), as applicable), and to those parties in interest who have filed written requests for notice.

N.D.W. Va. LRB 2072-1 – Notice to Other Courts of Bankruptcy Filing

(a) The debtor or other party filing a bankruptcy case must promptly send written notice of the bankruptcy filing to the following persons:

1. The clerk of any court where the debtor is a party to a pending civil action and all parties of record;

2. Any judge specifically assigned to a pending civil action in which the

debtor is a party;

3. Any arbitrator or arbitration panel, as applicable, if the debtor is a party to an arbitration proceeding;

4. All parties and counsel involved in any such action.

(b) If an action is commenced against the debtor subsequent to the entry of the order for relief and before the closing of the case, the debtor shall give written notice to the court or tribunal and to all parties and counsel involved of the filing of the bankruptcy petition.

N.D.W.V. LBR 2090-1 – Attorneys

(a) Admission to Practice

1. Except as otherwise provided in this Local Rule, the standards and requirements stated in the Local Rules of the District Court are adopted for attorney admission, discipline, and unauthorized practice in the Bankruptcy Court. An attorney admitted to practice before the District Court for the Northen District of West Virginia is also admitted to practice before the Bankruptcy Court for the Northern District of West Virginia.

(b) Government Attorneys

A U.S. government attorney may appear without motion for admission.

(c) Duty to Represent the Debtor

1. An attorney who represents a debtor in a bankruptcy case shall remain the responsible attorney of record for all purposes in the case until the case is closed or the attorney is relieved of representation by court order.

2. An attorney who is counsel of record for a debtor shall appear at all Court proceedings involving the debtor unless the attorney is excused or is given permission to withdraw, or unless the attorney has filed a pleading stating that the debtor has no objection to, or does not oppose, the relief requested, or counsel has endorsed without objection an order resolving the motion, objection, or application.

(d) Withdrawal

1. An attorney of record may withdraw only by Court permission, by an

order entered after service of the notice of withdrawal on the client, other counsel of record, the trustee, if any, and the United States Trustee.

2. Court permission to withdraw as attorney of record is not required if the motion for withdrawal is accompanied by the signature of the client.

3. An attorney seeking to withdraw must make reasonable effort to give the client actual notice that: (1) the client has the burden of keeping the court informed of where notice, pleadings, and other papers may be served; (2) the client has the obligation to prepare for all hearings and/or trial, or to hire other counsel; (3) failure to defend and/or prosecute the case or any related proceeding may result in possible default or dismissal; (4) the dates of any proceedings, including trial, may not be affected by the withdrawal of counsel.

(e) Substitution

An attorney of record may file a notice of substitution of counsel if the new counsel is employed in the same law firm as the attorney of record.

(f) Out-of-State Attorneys

1. Whenever it shall appear that a person, who has not been lawfully licensed and admitted to the practice of law in the State of West Virginia, has been duly licensed to be admitted to practice before a court of record of general jurisdiction in any other state or country or in the District of Columbia, and is in good standing as a member of the bar of such jurisdiction or has been admitted to the practice of law in the State of West Virginia, but has not been admitted to the bar of the United States District Court for the Northern District of West Virginia, he or she may appear in a particular action, suit, proceeding, or other matter in this Court by satisfying subparagraphs (A) and (B), and by obtaining local counsel pursuant to subparagraph (C).

A. Such person shall file a verified application for *pro hac vice* admission that states:

(i) the action, suit, proceeding or other matter which is the subject of the application;

(ii) the name, address and telephone number of the registration or disciplinary agency of all state courts, the District of Columbia or the country in which such

person is admitted;

(iii) the names and addresses of the member of the West Virginia State Bar who will be a responsible local attorney in the matter;

(iv) all matters before West Virginia tribunals or bodies (federal and State) in which such person is or has been involved in the preceding twenty-four months, unless such person is admitted to practice in West Virginia;

(v) all matters before West Virginia tribunals or bodies (federal and State) in which any member of the applicant's firm, partnership, corporation or other operating entity is or has been involved in the preceding twenty-four months, unless such person is admitted to practice in West Virginia;

(vi) a representation by the applicant for each State, the District of Columbia or any other country where said applicant has been admitted to practice, stating that the applicant is in good standing with the bar of every such jurisdiction and that he or she has not been disciplined in any such jurisdiction within the preceding twenty-four months; and

(vii) an agreement to comply with all laws, rules and regulations of West

Virginia State and local governments, where applicable, including taxing authorities and any standard for *pro bono* legal services;

B. The bankruptcy court does not charge a fee for the filing of a por hac vice application. The right to appear *pro hac vice* will not be granted unless a like courtesy or privilege is extended to members of the West Virginia State Bar in such other jurisdiction.

C. An attorney seeking *pro hac vice* admission shall retain a responsible local attorney that shall be an active member in good standing of the State bar, and have an office for the transaction of business within the State of West Virginia. Service of notices and other papers upon such responsible local attorney shall be binding upon the client and upon such person. The local attorney shall be required to sign all pleadings and affix his or her West Virginia State Bar identification number thereto, and to attend all hearings, trials or proceedings actually conducted before the judge, tribunal or other body of the State of West Virginia for which the applicant has sought admission *pro hac vice*. The local attorney shall further attend

the taking of depositions and other actions that occur in the proceedings which are not actually conducted before the judge, tribunal or other body of the State of West Virginia for which the applicant has sought admission *pro hac vice* and shall be a responsible attorney in the matter in all other respects. With permission of the Court, local counsel will not be required to attend routine court hearings or proceedings. In order to be a "responsible local attorney," the local attorney must maintain an actual, physical office equipped to conduct the practice of law in the State of West Virginia, which office is the primary location from which the "responsible local attorney" practices law on a daily basis. The responsible local attorney's agreement to participate in the matter shall be evidenced by his or her endorsement upon the verified statement of application, or by written statement attached to the application.

(g) Attorney Discipline in the Bankruptcy Court

1. The standards of professional conduct for attorneys practicing before this court are governed by the West Virginia Rules of Professional Conduct and Federal Rule of Bankruptcy Procedure 9011. The court or the clerk may refer complaints of misconduct and violations of the West Virginia Rules of Professional Conduct to the West Virginia State Bar for such actions and sanctions as that organization deems appropriate. Additionally, the court shall have such authority and discretion as permitted by and under the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, statutory and common law, and the inherent power conferred on it as a court, to take any and all disciplinary actions against attorneys practicing before it, including, but not limited to, suspension and disbarment from practice before this court.

2. Any attorney who is suspended or disbarred by the United States District Court for the Northern District of West Virginia is automatically suspended or disbarred from practice before the bankruptcy court for the same duration as ordered by the United States District Court.

PART III – CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY SECURITY HOLDERS; PLANS

N.D.W. Va. LBR 3001-1 – Claims and Equity Security Interests

(a) Number of Copies

1. Only a single proof of claim is required to be filed with the Clerk. A proof of claim may be filed in paper or electronically through the court's CM/ECF system.

2. Any entity that files a proof of claim by mail and wishes to receive an electronically generated notice of filing by return mail must include an additional copy of the proof of claim and a self-addressed, postage pre-paid envelope.

(b) Address of the Claimant

Failure of the claimant or its agent to provide and maintain a correct and updated address may cause the non-receipt of distribution checks.

(c) Proofs of Claims Filed by Business Entities

An officer or agent of a business entity may file a proof of claim in a bankruptcy case without being represented by an attorney. Disputes regarding a claim filed by a business entity shall be prosecuted or defended by an attorney for the business entity.

(d) Transferred Claims

Pursuant to the Federal Rules of Bankruptcy Procedure, the Clerk shall give notice of transferred claims. Any assignment or other evidence of a transfer of claim filed after the proof of claim has been filed shall include the claim number of the claim to be transferred. Absent any timely filed objection to the notice of transfer, the claim shall be, without further order of the court, noted as transferred on the records of the court or the claims' agent, if one is appointed.

(e) Documentation by Secured Creditors / Attorney's Fees and Costs

1. If a secured creditor fails to provide the requisite documentation supporting the perfection of the secured claim as required by Federal Bankruptcy Rule 3001, and continues to fail to provide such information after requested to do so by the case trustee, the case trustee may bring an action against the secured creditor requiring the delivery of such information and may recover the trustee's cost and expenses, including attorney's fees, attendant to such action.

2. If a secured creditor fails to provide the requisite documentation supporting the perfection of the secured claim as required by Federal Bankruptcy Rule 3001, the Chapter 13 trustee is authorized to reserve but not distribute funds to that creditor until the perfection issue is resolved. The secured creditor shall not be entitled to interest, late charges, or other fees

during the period if it fails to provide the trustee with evidence of perfection.

N.D.W. Va. LBR 3002-1 – Filing Proof of Claim or Interest

(a) In a Chapter 7 case, no deadline will be set for filing proofs of claim unless the trustee requests that the court issue a notice to creditors to file claims.

(b) A proof of claim filed before the conversion of any case is deemed filed in the converted case. Any claimant who did not file a proof of claim in a Chapter 9 or Chapter 11 case because the claim was correctly scheduled must file a proof of claim in the converted case within the applicable deadline.

N.D.W. Va. LBR 3003-1 – Chapter 11 Proofs of Claim

(a) In all Chapter 11 cases, unless otherwise ordered by the court, an entity other than a governmental unit shall file a proof of claim (if required to be filed) within 90 days after the date first set for the meeting of creditors under 11 U.S.C. § 341(a). The last date for a governmental unit to file a proof of claim, unless otherwise ordered by the court, shall be 180 days after the date of the order for relief.

(b) When a debtor in a Chapter 11 case lists a claim on the debtor's schedules as disputed, contingent, or unliquidated, the debtor shall serve notice of that listing to the affected creditor(s) within 14 days after the filing of the schedule, within 14 days after adding the disputed creditor to a previously added schedule, or within 14 days after conversion of the case to Chapter 11. The notice shall state that the creditor has a right to file a proof of claim and that the failure to do so in a timely manner may prevent the creditor from voting on a plan of reorganization or participating in any distribution.

N.D.W. Va. LBR 3007-1 – Objections to Claims

(a) How Made

1. A party that files an objection to the allowance of a proof of claim shall file the objection with the Clerk's office and shall serve a copy of the objection on the creditor filing the claim, and on the following entities:

A. In Chapter 7, 12, and 13 cases, on the Debtor and the Trustee

B. Chapter 9 and 11 cases, on the Debtor in possession and, if applicable, the Chapter 11 Trustee and any Committee appointed in the case.

2. If the objection is to a claim of the United States for federal taxes, the objection shall be served by the objecting party on the Special Procedures Section of the Internal Revenue Service, the local United States Attorney, and the Attorney General of the United States.

(b) Address for Service of Process

Any claimant filing a proof of claim shall be deemed to authorize service of any objection to the claim by the mailing of a copy of the objection to the address set forth in the "Name and address where notices should be sent" section of the proof of claim.

(c) Particularity Required

All objections to claims shall state with particularity the grounds therefore and shall set forth the relief or order sought.

(d) Non-Substantive Objections to Proof of Claim

The court may *sua sponte* refuse to disallow any filed proof of claim when the objection to that claim does not raise a grounds for disallowance under 11 U.S.C. § 502.

(e) Requests for Attorney's Fees

An objection to a proof of claim that also requests that the objecting party receive attorney's fees shall set forth the basis for departing from the American Rule, which provides that each party to litigation must bear his or her own costs and expenses, and shall state why such a departure is warranted under the facts of the particular case.

N.D.W. Va. LBR 3010-1 – Small Dividends

(a) Chapter 7 Cases

In a Chapter 7 case, the Trustee shall have discretion to distribute dividends of less than $5.00, or to treat such dividend in the same manner as unclaimed funds as provided by 11 U.S.C. § 347 of the Bankruptcy Code.

(b) Chapter 12 and Chapter 13 Cases

In a Chapter 12 or Chapter 13 case, the Trustee has discretion to distribute a payment in

an amount less than $15.00 to a creditor.

N.D.W. Va. LBR 3011-1 – Depositing Money in the Court Registry

A party may deposit funds in the court registry by filing a motion that (a) identifies the amount of funds to be deposited; (b) describes the origin of the funds; (c) requests the clerk to deposit the funds into an interest bearing account; (d) provides a list of the names, addresses, tax identification or social security numbers of affected parties that may have an interest in the funds.

N.D.W. Va. LBR 3011-2 – Unclaimed Funds

The Registry Funds Ledger is available to the public at the Bankruptcy Court Clerk's Office in Wheeling, West Virginia. To withdraw money from the unclaimed funds registry, a party shall submit an application setting forth the debtor's name, the bankruptcy case number, the Trustee in the case (if any), the amount of money on deposit, and the date on which the money was deposited. Attached to the application shall be a sworn affidavit regarding the facts contained in the application, and a statement that the affiant is aware of the federal and state requirements associated with personal representation of individuals and corporations. If a funds locator is applying for the release of funds on behalf of a creditor, an original power of attorney of the creditor must also be submitted with the application. The application, along with the affidavit, shall be served on the U.S. Attorney for the Northern District of West Virginia. In the event that there is any discrepancy in the application process, or if the Clerk or the Court has any questions with regard to the propriety of granting relief, a hearing will be set and the proper individuals will be expected to attend. Once the application has been processed or a hearing has been held and the Judge enters an order approving the application, a Standard Form 1166 is prepared and forwarded to the Clerk's disbursing agent for payment to the creditor.

N.D.W. Va. LBR 3012-1 – Valuation of Collateral

(a) Motions to Value and Payments to Creditors

In a Chapter 12 or 13 case, if a debtor seeks to value collateral and "cram down" a secured claim, the Trustee is authorized to make distributions to the secured creditor based on the valuation asserted by the debtor pending resolution of the valuation issue. In the event the motion to value is filed after the Chapter 13 trustee has made one or more distributions to the secured creditor, the trustee has no responsibility to seek disgorgement from the secured creditor for amounts previously paid.

(b) Motor Vehicles

The presumptive replacement valuation standard for motor vehicles is the average between the N.A.D.A. trade-in and retail value for the particular year, make, and model of the motor vehicle.

(c) Resolution of Valuation by Agreement

If a valuation issue raised before the Court is resolved by agreement, a stipulation determining the value shall be signed by the parties and filed with the Court.

N.D.W. Va. LBR 3015-1 – Chapter 13 Plans & Confirmation

(a) Model Plan

Any Chapter 13 plan filed in this District shall substantially conform to this District's model plan, as amended from time to time. A copy of the model plan is available for download on the court's website: www.wvnb.uscourts.gov. Counsel may delete the text of inapplicable sections of the model plan provided that the section numbering and section headings are retained, followed by an appropriate notation such as "None" or "Not Applicable."

(b) Adequate Protection Payments

1. After filing a Chapter 13 petition, but before confirmation, the debtor shall not make any direct payments to the creditors specified in 11 U.S.C. § 1326(a)(1)(B) and (C), unless the debtor is current on payments to such creditor and the debtor does not propose to pay the creditor through the trustee.

2. If a creditor specified in 11 U.S.C. § 1326(a)(1)(B) or (C) is being paid through the trustee, then all payments required by § 1326(a)(1) shall be made through the trustee, in the amount set forth in this proposed plan, unless otherwise ordered. Such payment shall be

subject to the trustee's percentage fee and shall be made in the ordinary course of the trustee's business; provided, however, that the trustee is not obligated to make any pre-confirmation adequate protection payments to a secured creditor until that creditor files a proof of claim.

(c) Disbursement of Plan Payments in the Event of Dismissal or Conversion Before Confirmation

See N.D.W. Va. LBR 1019-1(c).

(d) Payment of Attorney's Fees in Chapter 13 Cases

1. Except for any fee collected before the bankruptcy case is filed, which is duly disclosed to the court, no Chapter 13 debtor's attorney's fees may be paid between the date of filing and the date of confirmation; provided, however, that should a case be dismissed before confirmation, and to the extent that the Chapter 13 Trustee has funds available, the attorney may submit a fee application to the court to collect any amount due, but unpaid, for work performed before the case was dismissed pursuant to N.D.W. Va. LBR 1019-1(c).

2. After a debtor's Chapter 13 plan is confirmed, the Chapter 13 Trustee shall pay all outstanding attorney's fees concurrently with any secured debt payments and any domestic support obligation that is to be paid by the Trustee; provided, however, that funds are to be applied first to long term mortgage debts paid through the Trustee, second to equal monthly payments to other secured creditors, third to domestic support creditors, and only then to attorney's fees. Attorney's fees are to be paid, in full, before any plan payment is applied to an arrearage claim or before payment is applied to any other priority or unsecured debts.

(e) Payment of Secured Debts and/or Long Term Secured Debts in Chapter 13

1. If a debtor files a Chapter 13 petition and seeks to cure an arrearage on a secured debt, including a long term secured debt, payments on the arrearage and payments on the secured debt shall be made by the Chapter 13 Trustee unless the debtor files a motion with the court that establishes good cause as to why the Chapter 13 Trustee should not be the disbursing agent.

2. If a debtor files a Chapter 13 petition and is not in arrears on a secured debt payment, then the debtor may, in the debtor's discretion, continue to act as the disbursing agent on the claim and pay the secured creditor directly.

3. If a debtor files a Chapter 13 petition and is not in arrears on a secured debt payment at the time of filing, and during the pendency of the Chapter 13 case the debtor falls behind on the secured debt payment, and if the creditor files a motion to lift the automatic stay to repossess or foreclose on the secured collateral, and if the debtor proposes to cure the default on the secured debt, then the debtor shall lose the right to be the disbursing agent on the secured debt and both the post-petition cure and ongoing secured debt payments shall be made by the Trustee without the need to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329. The debtor may file a motion with the court that establishes good cause as to why the debtor should continue to be the disbursing agent on the claim in lieu of the Chapter 13 Trustee.

4. The Chapter 13 Trustee shall receive from plan payments such expenses and compensation as provided by the Executive Office of the U.S. Trustee. Additional administrative compensation pursuant to 11 U.S.C. § 503 may be ordered by the Court upon appropriate motion as a result of extraordinary circumstances on a case by case basis.

(f) Objections to Chapter 13 Plans

1. Any objection to a Chapter 13 plan proposed by a debtor, filed by any party other than the Chapter 13 Trustee, must be in writing and must be filed with the court no later than ten days after the date first set for the meeting of creditors under § 341(a) of the Bankruptcy Code.

2. In cases where the proposed plan, or amended plan, is not filed within ten days before the date first set for the meeting of creditors under § 341(a) of the Bankruptcy Code, any objection to confirmation, filed by any party other than the Chapter 13 Trustee, must be in writing and filed with the court no later than twenty days from the filing of the proposed plan, or amended plan, or no later than three days before the scheduled confirmation hearing, whichever is sooner.

3. In cases where there is no pending objection to confirmation of the Chapter 13 plan proposed by the debtor, and where the Chapter 13 trustee believes that confirmation of the debtor's proposed plan is appropriate, the Chapter 13 trustee may request that the confirmation hearing be taken off the court's docket, and/or submit an order to the court confirming the plan.

The court may sign that order in advance of, and in the absence of, any previously scheduled confirmation hearing without further notice to parties in interest, or, may direct that the confirmation hearing be held.

(g) Chapter 13 Wage Withholding Orders

1. On the filing of a Chapter 13 petition, the Court shall enter an order directed to the employer of the debtor that is listed in the debtor's plan and/or schedules. The order shall require that the employer withhold from the debtor's earnings an amount equal to the proposed monthly payments under the debtor's Chapter 13 plan. The Court may not enter a wage withholding order if the debtor's income is derived from sources other than employment. Examples of income not subject to a "wage withholding order" include social security, pension/retirement, unemployment, or self-employment; provided, however, that if the debtor has income from employment in addition to income derived from sources other than employment, and if the income from the debtor's employment is sufficient to make the debtor's monthly plan payment, the Court may enter a wage withholding order.

2. If the debtor objects to the entry of a wage withholding order, such objection shall be made with specificity and filed along with the filing of the petition. If the debtor's objection is sustained, then the order for the debtor to commence payments shall include language that if the debtor misses one payment, then upon the expiration of a ten day notice to the court by the trustee, a wage withholding order shall be entered forthwith; provided, however, that entry of a wage withholding order is otherwise proper under the paragraph (g)(1), *supra*.

3. If no objection is filed with the petition, wage withholding, if applicable, shall commence on the first pay period following the filing of the Chapter 13 petition and service of the wage withholding order on the debtor's employer. Payments to the Chapter 13 Trustee shall commence within thirty (30) days of the filing of the Chapter 13 petition in accordance with 11 U.S.C. §1326 (a)(1). It is the debtor's responsibility to send payments directly to the Chapter 13 Trustee until the commencement of the wage withholding by the debtor's employer. Notwithstanding the entry of a wage withholding order, it is also the responsibility of the debtor to ensure that all monthly

plan payments are made. If a debtor sends a personal check to the Trustee that is returned for insufficient funds, personal checks will no longer be accepted by the Trustee and future payment should be made by cashier's check or money order.

4. In the event a debtor seeks to vacate a wage withholding order to the employer, the debtor must file a motion to vacate the order and demonstrate that appropriate circumstances exist for the debtor's direct remittance of plan payments.

5. In the event that a debtor files an amended plan that states a different payment amount from that proposed in the earlier plan, the debtor is responsible for submitting a new wage withholding order.

6. In the event that the plan payment proposed by the debtor is altered as a result of confirmation of the plan, the Chapter 13 trustee shall submit a new wage withholding order.

(h) Student Loans

The plan of any debtor with student loan obligations shall state the treatment of that obligation.

(i) Confirmation Orders

The Chapter 13 trustee shall prepare the confirmation order.

(j) Denial of Confirmation

If the court denies confirmation of a debtor's Chapter 13 plan, the Clerk is directed to issue an order dismissing the Chapter 13 case unless, within 21 days after denial of confirmation:

1. The debtor files a new Chapter 13 plan;

2. The debtor converts or moves to convert the case to another Chapter of the Bankruptcy Code;

3. The debtor files a motion for post-judgment relief; or

4. The court orders otherwise.

(k) Suspension of Payments

1. The court may order the suspension of plan payments pursuant to a motion. If the court orders a suspension and the debtor is subject to a wage withholding order, it shall be the responsibility of the debtor to cause the affected employer to stop the deduction of the plan

payments for the amount of the suspension so ordered, and it shall be the responsibility of the debtor to ensure that plan payments recommence on time. Any funds remitted to the Chapter 13 trustee, despite a court ordered suspension, are subject to being disbursed by the trustee.

2. An order granting the suspension of plan payments does not eliminate the payment; rather, it adds payments onto the end of the plan, provided that the plan length does not exceed 60 months, in which case each subsequent payment will be increased to cure the arrearage caused by the suspension of plan payments.

3. The granting of a suspension in plan payments is without prejudice to the rights of any secured creditor to seek a lift of the automatic stay, or to seek other appropriate relief.

4. The court may order the suspension of plan payments without the need for a party to file an amended plan, or to file motion to modify a plan after confirmation.

N.D.W. Va. LBR 3015-2 – Amended Chapter 13 Plans

(a) Time for Filing

The debtor may file an amended plan at any time before confirmation. The time for filing an objection to an amended plan is specified in N.D.W. Va. LBR 3015-1(f). The debtor is responsible for submitting a new wage withholding order if the payment amount changes pursuant to N.D.W. Va. LBR 3015-1(g).

(b) Continuing the Confirmation Hearing on the Filing of an Amended Plan

In the event that the debtor files an amended plan, the Clerk may continue any previously set confirmation hearing date to allow proper notice to parties in interest pursuant to Fed. R. Bankr. P. 2002(b).

(c) Service

The amended Chapter 13 plan must be served in the same manner as the original plan; provided, however, that the debtor may elect to serve an amended plan only on those creditors that are adversely effected by the amendment. In the event that an amended plan is filed within 10 days before a previously scheduled confirmation hearing date, debtor's counsel shall file and shall serve on the entire mailing matrix in the case a notice that the scheduled confirmation hearing is continued.

(d) Effect on Previously Filed Plans and Objections to Confirmation of Plan

Once an amended Chapter 13 plan is filed by the debtor, all previously filed unconfirmed plans are deemed withdrawn. The filing of an amended plan does not remove any previously filed objection to confirmation; rather, the previously filed objection is deemed to be an objection to the amended plan, and removal of any previously filed objection must be done either by: (1) court order, (2) having the objecting party withdraw the objection, or (3) having the Chapter 13 trustee recommend confirmation and stating in the recommendation that the objection is mooted by the amended plan.

(e) Cure of Post-Petition, Pre-Confirmation Defaults by Amendment

Pursuant to N.D.W. Va. LBR 3015-1(e)(3), an amended plan is not required in the event that the creditor agrees to allow the debtor to cure a post-petition, pre-confirmation arrearage through the Chapter 13 trustee. The Chapter 13 trustee shall reflect the agreement and the increased payment amount to the creditor in the confirmation order. Any agreed order to resolve the delinquency shall be sent to the Office of the Chapter 13 trustee for signature. The order shall include the exact amount of the post-petition, pre-confirmation arrearage. In addition, the exact amount of the on-going payment along with an address where payments shall be included. The failure to include any of this information may result in payments being delayed or sent to the wrong address or in the wrong amount. If there is a wage withholding order in effect, the trustee is authorized to submit an amended wage withholding order changing the amount necessary for the payment of the claim.

N.D.W. Va. LBR 3015-3 – Modified Chapter 13 Plans

(a) Time for Filing

A motion to modify a Chapter 13 plan may be filed at any time after entry of the order confirming the original plan.

(b) Contents of Motion

A motion to modify a confirmed plan shall include, as applicable, the following information:

1. The date that the original plan was confirmed, and the date of any subsequent

modifications.

2. The reasons why a plan modification is sought, including an explanation of the substantial and unanticipated change in circumstances that occurred that allows the movant to overcome the res judicata effect of confirmation. *In re Arnold*, 869 F.2d 240 (4th Cir. 1989).

3. A reference to the provisions of the confirmed plan that are being modified, and the approximate number of months needed to complete the plan as modified.

4. The extent to which the proposed modification affects the rights of creditors or other parties in interest.

5. If the motion to modify proposes to change the amount of each periodic payment to the plan, an amended Schedule I & J.

6. A statement showing that the proposed modification complies with the best interest of creditors test of 11 U.S.C. § 1325(a)(4), as made applicable to modification proceedings by § 1329(b)(1).

(c) Curing Post-Confirmation Defaults By Modification

Pursuant to N.D.W. Va. LBR 3015-1(e)(3), a motion to modify a plan is not required in the event that the creditor agrees to allow the debtor to cure a post-confirmation arrearage through the Chapter 13 trustee, and payments to creditors under the plan are not reduced. Any agreed order to resolve the delinquency shall be sent to the Office of the Chapter 13 trustee for signature. The order shall include the exact amount of the post-confirmation arrearage. In addition, the exact amount of the on-going payment along with an address where payments shall be included. The failure to include any of this information may result in payments being delayed or sent to the wrong address or in the wrong amount. If there is a wage withholding order in effect, the trustee is authorized to submit an amended wage withholding order changing the amount necessary for the payment of the claim.

(d) Hearing on Motion / Order

If no timely objection is filed under N.D.W. Va. LBR 9013-1, then the court may enter an order granting the proposed modification without holding a hearing, or the court may direct that a hearing be held. After the court signs the order prepared by the movant, the Chapter 13

trustee shall file an amended confirmation order, as applicable. If there is a wage withholding order in effect, the trustee is authorized to submit an amended wage withholding order changing the amount necessary for the payment of the modified plan.

N.D.W. Va. LBR 3015-4 – Post-Petition Claims under 11 U.S.C. § 1305

When a creditor files a post-petition claim under § 1305(a), parties in interest have 21 days to file a written objection to that claim. If no objection is filed, or if the court overrules any filed objection, the Chapter 13 trustee shall send notice to the debtor and debtor's counsel of the amount necessary to increase the plan payments in order to pay the claim in full. If there is a wage withholding order in effect, the trustee is authorized to submit an amended wage withholding order changing the amount necessary for the payment of the plan as confirmed plus the post-petition claim. Plan payments may be increased without the need to filed an amended plan or a motion to modify a confirmed plan.

N.D.W. Va. LBR 3015-5 – Plan Payoffs

A motion requesting the Chapter 13 trustee to provide a plan payoff amount shall include:

1. The reason why the payoff is needed.
2. The source of the funds being used to payoff the plan.
3. If the plan has run less than the applicable commitment period, a statement that all filed and allowed unsecured non-priority creditors will be paid in full, or state with particularity why payment in full of that class of creditors in not required.
4. State with specificity any claims that are to be excluded from the payoff calculation.

N.D.W. Va. LBR 3015-6 – Accounting for Mortgage Debts in Chapter 13

(a) Creation of Two Accounts

1. Account One

Upon the filing of a chapter 13 bankruptcy petition, the amounts outstanding on

a debtor's loan will be divided into two new, internal administrative accounts. The first account will contain the sums to be paid under debtor's plan by the Chapter 13 Trustee as the pre-petition arrearage owed to the creditor ("Account One").

2. Account Two

A. The second account will reflect the principal amount due on the petition date ("Account Two"). No other sums should be owed on Account Two at the start of the case. Account Two will include items such as post-petition interest accrual, post-petition property insurance, or property tax expenditures. The regular monthly note payments, whether it be made by the Debtor or the Trustee, will be posted to this account, reducing post-petition interest accrual, post-petition property and tax expenditures, and principal.

B. The account's first posting will typically be the first installment payment due on the loan following the petition date.

(b) Continuation of Creditor's Internal Accounting Procedures

A secured creditor may maintain, post-petition, its customary records on the loan provided that the two new internal accounts shall control the loan's administration during the pendency of the bankruptcy case.

(c) Post-Petition Charges

1. Increased Interest & Escrow Payments

Increased interest and escrow payments that come due after the petition date that are not covered by the debtor's or Trustee's on-going, long term debt payments, shall be added to Account Two. To collect the increased payment, the creditor shall file a Notice of Payment Change with the Clerk. Upon the filing of a Notice of Payment Change, the Trustee shall change the monthly payment amount. In the event a Notice of Payment Change is filed, the Trustee shall be responsible to submit to the Court an amended wage withholding order and to notify debtor and debtor's counsel in writing of the change in plan payment. In the event that a payment change affects the rights of any other creditor, a pre-confirmation amended plan or a motion to modify a confirmed plan must be filed.

2. Other Charges, Fees, and Costs

A. A secured creditor may provisionally accrue, but not assess or collect,

any other post-petition charges, fees, costs, etc., allowed by the note, security agreement and/or state law. At least once every twelve months during a case's administration, the secured creditor shall file with the Court and serve upon the debtor, debtor's counsel, and the Trustee, notice of any charge, fee, or cost not specified in subparagraph (c)(1). The notice shall contain an itemization describing the charge, fee, or cost, its amount, the date incurred, and if relevant, the name of the third party to whom the charge was paid. The notice will also provide a direct reference to the provisions of the note, security agreement, or state law under which the creditor asserts its authority to assess each type of charge.

B. The notice of the other charge, fee, or cost shall state that debtor, the Trustee, and any other interested party, shall have 21 days within which to object to any or all of the assessments outlined in the notice. It shall contain a statement to the effect that debtor may elect to: (i) add the charges to the plan (Account One) with approval of the bankruptcy court, (ii) satisfy the charges directly outside the plan, or (iii) defer repayment until the conclusion of the case. In the absence of any response from the debtor or the Trustee, the debtor will be deemed to have selected option (iii).

C. Fees, charges or costs under subparagraph (c)(2) that are not disclosed within twelve months of being incurred shall result in the fee, charge, or cost being treated as satisfied upon entry of the debtor's discharge. Likewise, the failure to disclose a charge, fee, or cost in response to a motion filed by the Trustee deeming mortgage payments to be current at or near the end of the case (unless such such charge fee or cost had previously been timely disclosed) shall result in the fee, charge, or cost being treated as satisfied upon entry of the debtor's discharge.

(d) Creditor's Actions on Discharge

Upon the issuance of a discharge, the creditor shall adjust its permanent records to reflect

the current nature of debtor's account; provided, however, that if debtor elected to defer the payment of approved post-petition charges until the conclusion of the case's administration, then the creditor shall be authorized to collect said sums in accordance with the provisions of its note, security instrument, and state law.

N.D.W. Va. LBR 3018-1 – Acceptance or Rejection of Plan

Ballots to accept or reject a Chapter 11 plan shall instruct all parties entitled to vote on the plan to submit their ballot directly to counsel for the proponent of the plan. Unless otherwise ordered by the Court, counsel for the proponent of the plan shall tabulate the ballots, by class, and shall file the original ballots and a summary of the voting with the Clerk of the Bankruptcy Court not less than three working days before the hearing on confirmation.

N.D.W. Va. LBR 3021-1 – Post-Confirmation Procedures

Six months after entry of the confirmation order, and every six months thereafter, or within such time as the court may direct, the proponent of a confirmed plan shall file a report setting forth the actions taken, the progress made toward the consummation of the plan, and the time frame anticipated until a final report and motion for a final decree can be filed. Service of the report shall be on any disbursing agent, the debtor, debtor's counsel, the trustee, the United States Trustee, and any party who specifically requested notice, as applicable.

N.D.W. Va. LBR 3022-1 – Final Decree

(a) Fully Administered Plan – Non-Individual

A Chapter 11 plan is deemed fully administered when:

1. The order confirming the plan is final;
2. All deposits required by the plan have been distributed;
3. The property proposed by the plan to be transferred has been transferred;
4. The debtor, or the debtor's successor under the plan, has assumed the business or management of the property dealt with by the plan;
5. Payments under the plan have commenced; and
6. All motions, contested matters, and adversary proceedings have been finally resolved.

(b) Fully Administered Plan – Individual

For an individual, a Chapter 11 plan is deemed fully administered when discharge is entered, or on completion of all plan payments, whichever is later, unless the court orders

otherwise.

(c) Request for Final Decree

After a case is fully administered, the plan proponent, or the United States trustee, shall file a motion for the entry of a final decree and to close the case. Upon the filing of the motion, the Clerk shall send to counsel for the plan proponent a notice of any outstanding fees and charges, and shall send notice to parties in interest of the time in which to file an objection to the entry of final decree.

PART IV – THE DEBTOR: DUTIES AND BENEFITS

N.D.W. Va. LBR 4001-1 – Relief From Automatic Stay

(a) Notice; Default

1. When a motion for relief of stay is filed, a party has 14 days to respond to the motion, or 3 days before the hearing on the motion, whichever is earlier, as provided for in N.D.W. Va. LBR 9013-1. Notice of the response period will be sent by the Clerk. If no response is timely filed, the court may deem the motion as admitted, and the court may enter a final order.

2. If a response is timely filed, it is the general practice of the court to set the motion and response for a preliminary, telephonic hearing; however, the court may, in its discretion, treat the initial hearing as the final hearing and enter a final order with respect to the motion.

3. In the event the court continues the hearing on the motion for relief of stay after holding a preliminary hearing, the court will attempt to schedule the final hearing within 30 days of the conclusion of the preliminary hearing; provided, however, that in the absence of a specific objection at the time of the preliminary hearing, the moving party is deemed to consent to a longer continuance in the event that the court schedules the final hearing more than 30 days after the preliminary hearing is held.

(b) Contents of Motion

A motion for relief from the automatic stay shall contain, as applicable:

1. The names of the debtor and the moving party;

2. A description of the debt owed to the movant;

3. A description of the property encumbered;

4. A description of the security interest involved, with attached exhibits evidencing perfection of that security interest;

5. A statement of the principal amount owed, the arrearage, and the payoff amount. With regard to mortgage debts, attached to the motion shall be a legible payment history that details the date each post-petition payment was received, the amount of each post-petition payment received, and how each post-petition payment was applied by the movant. The payment history shall include an itemization describing all charges accrued, the date incurred, and if relevant, the name of the third party to whom the charge was paid or owed. Pursuant to 11 U.S.C. § 362(g)(2), the debtor has the burden to prove any post-petition payment alleged to have been made that is not set forth in the motion, or attachments thereto; and,

6. A statement as to the creditor's estimate of the value of the collateral and the information on which that value is based, or in lieu thereof, the debtor's scheduled value of the collateral;

7. A statement as to the existence of cause to modify the automatic stay.

(c) Contents of Response

In addition to other defenses, if the debtor plans to make an offer of adequate protection, the terms of the offer shall be set forth in the response to the motion for relief from the automatic stay.

(d) Conference

After a response is filed to a motion for relief from the automatic stay, the parties shall confer with respect to the issues raised by the motion in advance of any preliminary or final hearing for the purpose of determining whether a consensual order may be entered and/or for the purpose of stipulating relevant facts, such as the value of the property and the extent and validity of the security interest.

(e) Final Hearing

Three days before any scheduled, final hearing, the parties shall mark and exchange all

exhibits which may be offered, and exchange a list of witnesses who may be called.

(f) Conditional Relief from the Stay

1. Conditional orders granting or denying relief from the automatic stay are those in which the debtor is given a limited period of time to effect a cure of the arrearage that caused the motion to be filed. Conditional orders include, *inter alia*, (1) a provision for future payment of all or a portion of an arrearage, (2) "drop dead" clauses, or (3) a grace period for curing a default.

2. Unless otherwise set forth in the conditional order, if the moving party alleges that the debtor has defaulted on a term in a conditional order for relief from the automatic stay, the moving party shall give the debtor a ten day written notice to cure the default. After such ten-day period has expired, without cure, the moving party shall submit a final order setting out the terms of the alleged breach and granting the relief requested. The court may enter the proposed order without further notice or hearing.

N.D.W. Va. LBR 4001-2 – Automatic Stay – Extension or Imposition

(a) Scope

This Local Rule applies to motions to extend or impose the automatic stay pursuant to 11 U.S.C. § 362(c)(3) or (4).

(b) Timing of Motion

When a debtor seeks to extend the automatic stay of 11 U.S.C. § 362(a) with respect to any action taken with respect to a debt, or property securing such debt, or with respect to any lease, beyond the 30th day following the petition date in accordance with § 362(c)(3)(B), the motion shall be filed within 7 days of the petition date.

(c) Contents of Motion

A motion to extend or impose the automatic stay under § 362(c)(3) or (4) should contain the number of previous bankruptcy cases under the Bankruptcy Code involving the same debtor that were pending in the one-year period preceding the filing of current case, along with the jurisdiction and case number of each previous case; whether the presumption of a lack of good faith arises under §§ 362(c)(3)(C) or 362(c)(4)(D), along with the facts that the movant is

relying on to rebut that presumption, and in Chapter 13 cases, the reason why the previous case was dismissed and the change in circumstances, if any, that will prevent a dismissal on the same grounds in the current case.

(d) Hearing on Motion

Once a timely motion to extend or impose the automatic stay has been filed, the Clerk will issue a notice setting a hearing on the motion (regardless of whether or not a response is filed) as soon as practicable, but not later than 30 days following the petition date for motions to extend the automatic stay under § 362(c)(3).

N.D.W. Va. LBR 4001-3 – Automatic Stay – Mechanic Lien

The stay is automatically modified without the need to file a motion to allow the filing of a notice in order to preserve a mechanic's lien. Before proceeding with further action, the party must file a motion and obtain an order modifying the automatic stay.

N.D.W. Va. LBR 4001-4 – Automatic Stay – Internal Revenue Service and the West Virginia State Tax Department

The automatic stay afforded by § 362 shall be deemed modified without motion, notice or hearing in Chapter 7 and 13 cases 45 days after the order for relief is entered in such cases for the sole purpose of allowing the Internal Revenue Service, or the West Virginia State Tax Department, or similar taxing entity, to offset any pre-petition tax debts in accordance with 26 U.S.C. § 6402, W. Va. Code § 11-10-11(j), or similar statute, unless the debtor or another party in interest files an objection within said 45-day period to any proposed or anticipated setoff and requests a hearing.

N.D.W. Va. LBR 4001-5 – Automatic Stay – Mortgage Statements

(a) Periodic Statements

A periodic statement of account sent by a mortgage creditor in the ordinary course of business to a debtor in a pending case shall not be deemed a violation of the automatic stay so long as it does not include a demand for payment. The statement may include a coupon or other payment for the debtor's use in making the periodic payment(s) on the account.

(b) Secured Creditor Inquiries

Affected secured creditors may inquire of the debtor or the co-debtor in writing of: (1) the status of insurance coverage on the property used as collateral; (2) whether insurance premiums are paid directly by the debtor or co-debtor; (3) the location, inspection, and appraisal of the collateral; and (4) the status of direct payments. The Debtor shall answer such inquiries by the secured creditor.

N.D.W. Va. LBR 4001-6 – Automatic Stay – Chapter 13 Plan Payments

(a) If an order is entered granting relief from the automatic stay in a Chapter 13 case, the trustee shall continue to make payments to the secured creditor pursuant to the terms of the plan, adequate protection order, or other order of the court on the claim(s) related to that collateral. Payments shall cease on the happening of one of the following events: (1) An objection to the secured creditor's claim is filed and an order is entered directing the trustee to cease making payments on the claim; (2) the claimant notifies the trustee that no further payments are owed on the claim(s) in which case the trustee shall notify the parties of such action; (3) an amended and/or modified plan is filed which specifically provides for no further payment to the claimant; or (4) the order terminating the stay directs the trustee to cease making payments on the claim.

(b) When payments on a claim cease, unless otherwise directed, the trustee shall redirect the funds to other creditors with filed and allowed claims in accordance with the plan.

N.D.W. Va. LBR 4001-7 – Automatic Stay – Action Following Foreclosure

A party obtaining relief from the automatic stay and thereafter consummating a foreclosure sale must provide a copy of the Report of Sale to the trustee.

N.D.W. Va. LBR 4001-8 – Cash Collateral and Financing Orders

(a) Contents of Motion

1. If a cash collateral and/or financing order contains any of the provisions listed in paragraphs A-G below, those provisions shall be listed on the first page of the motion and

identify the location of the provision in the motion and/or proposed order. The motion must contain a justification for its inclusion.

A. Provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the pre-petition secured creditor (*i.e.*, clauses that secure pre-petition debt with post-petition assets in which the secured creditor would not otherwise have a security interest by virtue of its pre-petition security agreement or applicable law);

B. Provisions or findings of fact that bind the estate or other parties in interest with respect to the validity, perfection, or amount of the secure creditor's pre-petition lien, or the waiver of claims against the secured creditor without first giving parties in interest at least 75 days from the entry of the order, and the creditor's committee, if formed, at least 60 days from the date of its formation to investigate such matters;

C. Provisions that seek to waive whatever rights the estate may have under 11 U.S.C. § 506(c);

D. Provisions that immediately grant to the pre-petition secured creditor liens on the debtor's claims and causes of action arising under 11 U.S.C. § 544, 545, 548, and 549;

E. Provisions that deem pre-petition secured debt to be post-petition debt, or that use post-petition loans from a pre-petition secured creditor to pay part or all of that secured creditor's pre-petition debt, other than as provided in 11 U.S.C. § 552(b);

F. Provisions that provide disparate treatment for the professionals retained by a creditors' committee from those professionals retained by the debtor with respect to a professional fee carveout; and

G. Provisions that prime any secured lien without the consent of that lienor;

2. All financing motions shall also provide a summary of the essential terms of the proposed use of cash collateral and/or financing (e.g., the maximum borrowing available on a final basis, the interim borrowing limit, borrowing conditions, interest rate, maturity, events of default, use of funds limitations, and protections afforded under 11 U.S.C. §§ 363 and 364.

N.D.W. Va. LBR 4002-1 – Debtor's Duties

(a) Pursuant to N.D.W.Va LBR 2072-1, a debtor filing a bankruptcy case has the duty to give written notice to any court or tribunal where there is a pending action against the debtor, and to the parties and counsel in the action.

(b) Every debtor must maintain a current address with the Clerk until the case is closed. A debtor proceeding pro se must maintain a current telephone number with the Clerk until the case is closed.

(c) A debtor shall permit a secured creditor's reasonable request to inspect collateral.

N.D.W. Va. LBR 4004-1 – Grant or Denial of Discharge

(a) Chapter 7 Cases Closed Without Discharge

If a debtor has not filed a statement of completion of course in personal financial management within 45 days after the date first set for the meeting of creditors under 11 U.S.C. § 341, the Clerk may close the case without entry of a discharge order. The debtor may subsequently fulfill the requirement that the debtor take a course in personal financial management, and file a motion to reopen the debtor's bankruptcy case under § 350(b) to allow the filing of the statement and to allow entry of a discharge order. The debtor must pay the full reopening fee due for filing the motion.

(b) Chapter 13 Cases – Completed Plans

1. For all Chapter 13 cases filed on or after October 17, 2005, after the Chapter 13 trustee has filed a report that the debtor has completed all plan payments, the debtor shall file a certificate of compliance and motion for the issuance of a discharge on a form provided by the Clerk.

2. If a debtor fails to file the certificate of compliance and motion for the issuance of a discharge within 30 days after the Chapter 13 trustee report of completed plan payments, or before the Chapter 13 trustee files a final report, whichever is longer, the Clerk may close the case without entry of a discharge. The debtor may subsequently file a motion to reopen the debtor's bankruptcy case under § 350(b) to allow the filing of the certificate of compliance and motion for the issuance of a discharge. The debtor must pay the full reopening fee due for

filing the motion.

PART V – COURTS AND CLERKS

N.D.W. Va. LBR 5001-1 – Courts and Clerk's Offices

(a) Telephonic Court Hearings

All parties have the right to hold a hearing in open court, and so far as convenient, in a regular courtroom. For the convenience of the parties and the court, and in the absence of a specific objection, the court may hold telephonic hearings from the Judge's chambers in lieu of a hearing in open court. Attorneys or other parties in interest may appear in-person for the telephonic hearing in the Judge's chambers. All regularly scheduled telephonic hearings that are held in lieu of a hearing in open court shall be recorded.

(b) Video Conferencing

The Court may set any hearing or trial for video conference. A party in interest may request the court to set a hearing by video by calling the Judge's courtroom deputy, and the request may be granted or denied at the discretion of the presiding Judge. Depending on technology, space, and time restrictions, video conferencing may be available to parties in interest at each of the divisional courthouses in the Northern District of West Virginia.

(c) Office Hours

The Clerk's Office in Wheeling and Clarksburg is open to accept filings Monday through Friday, excepting legal holidays, from 8:30 a.m. to 5:00 p.m. No night box is available for filing after hours.

N.D.W. Va. LBR 5003-1 – Records Kept by the Clerk

Pursuant to 11 U.S.C. § 505(b) and Fed. R. Bankr. P. 5003(e), the Clerk maintains a register of mailing addresses for federal and state governmental units and certain taxing authorities. Governmental units wishing to be included in the register should contact the Clerk. It is the responsibility of a governmental unit listed in the register to timely update its address or related information. The register is available on the court's website: wvnb.uscourts.gov.

N.D.W. Va. LBR 5005-1 – Filing Pleadings and Orders

(a) Filing With the Clerk

All pleadings, including, but not limited to complaints, answers, motions and applications, and all prepared orders, shall be filed with the Office of the Clerk of the Bankruptcy Court. In addition, and with the prior permission of the Judge, any pleading may be filed with the United States Bankruptcy Judge.

(b) Other Filings

Upon approval of the Clerk of the District Court, as well as the Clerk of the Bankruptcy Court, a case or pleading may be filed in a division not staffed by Bankruptcy Court personnel. In such event the time, date and initials of the employee of the United States District Court shall be noted on the pleading, and the pleading shall be forthwith transmitted to the United States Bankruptcy Court for further processing.

N.D.W. Va. LBR 5005-2 – Filing and Transmittal of Papers; Embedded Advertisements

(a) Filing Papers - Size of Papers.

(1) For papers not filed electronically, the paper must be of a weight and composition which will allow documents to be readily scanned or imaged to electronic format. Ordinary copy paper of modest cost is sufficient. For example, paper which is coated, bonded, heavy, curled, known as “onionskin,” etc., is not suitable

(2) No paper with text on both sides shall be acceptable (i.e., no “two-sided” pages);

(3) Pages of a document shall not be stapled or fastened together (except as by clips or
other easily removable devices);

(4) Carbon copies shall not be filed;

(5) Exhibits shall not be “tabbed”;

(6) All pages of a document, including attachments, shall be of letter size (8 ½" x 11").

(b) Facsimile Filing.

No pleading or other paper will be accepted for filing by facsimile without the prior permission of the Clerk or his designee. In no event shall a bankruptcy petition or adversary

proceeding be filed by facsimile.

(c) Identification of Attorney

Every pleading, order, or other paper filed by an attorney shall include the attorney's mailing address, telephone number, facsimile number, and state bar number in the signature block under the signature line.

(d) Proposed Orders

A party submitting a proposed order to the Court for signature shall leave two inches of white space on the top of the first page of the proposed order for placement of the Judge's electronic signature.

(e) Embedded Advertisements

All registered users of this Court's CM/ECF system shall review each document before filing to ensure that no advertisements or embedded links/hyperlinks directing the viewer's browser to the servicing agency's website are contained within the document. Any electronically-filed document containing an advertisement or embedded link may be stricken or deleted from the court record.

N.D.W. Va. LBR 5005-3 – Mandatory Electronic Case Filing

Pursuant to Fed. R. Bankr. P. 5005(a)(2), and consistent with the established *Administrative Procedures for Electronic Case Filing* of the District Court of this Judicial District, and with the exceptions hereafter noted, all petitions, support documents, adversary pleadings, motions and proposed orders shall be filed by electronic means by use of software known as CM/ECF (Case Management / Electronic Case Filing), except as follows:

(1) Parties without legal representation (*pro se* filers) may file papers by conventional means;

(2) Attorneys who have established to the Court's satisfaction that requiring electronic filing would create a hardship or general denial of access to the courts;

(3) Creditors who have not been trained, registered, and certified in electronic document filing may file all documents by conventional means;

(4) If electronic filing equipment of either the court or the registered user is

temporarily inoperable, the registered user may file pleadings and other papers by conventional means pursuant to N.D.W. Va. LBR 5005-10;

(5) Exhibits admitted in evidentiary hearings may be filed by conventional means unless otherwise ordered by the court.

N.D.W. Va. LBR 5005-4 – Eligibility and Registration for Electronic Case Filing

(a) Attorneys

Attorneys admitted to the bar of this Court, including those admitted *pro hac vice*, may register as electronic filing users of the Court's CM/ECF (Case Management/Electronic Case Files) system. Registration is initiated by reviewing the Court's ECF Attorney Training Manual and completing and submitting two forms: the Electronic Filing Registration Form and the CM/ECF Email Notification Sign-Up Form. The forms and the ECF Attorney Training Manual are available on the Court's website at: http://www.wvnb.uscourts.gov/wvnbcm_ecf/index.htm In order to complete the forms, the attorney must provide their name, address, telephone number and internet email address. ***In addition, attorneys must have successfully completed an Electronic Filing Training Course as provided by the Northern District of West Virginia Bankruptcy Court or by another Federal Court and must provide proof of such completion of training.***

(b) Consent to Electronic Service

Registration, by an attorney, as an electronic Filing user, constitutes consent to electronic service of all documents as provided in these rules in accordance with the Federal Rules of Civil Procedure.

(c) Non-Represented Parties

Creditors may register as "limited use" electronic filing users by completing and submitting the Court's Electronic Filing Registration Form. The Court's CM/ECF Email Notification Signup Form is optional for creditors, but an internet email address, for contact purposes, is required. Completion of an Electronic Filing Training Course is optional as well. This Court

issues “limited use” electronic filing logins to the creditor, not the individual who will be using the login, and the Court will issue only one login per creditor name and address.

(d) Passwords and Security

Subsequent to registration, the electronic filing user may receive, via email, notification of their user login and password. Electronic filing users agree to protect the security of their passwords and immediately notify the Clerk if they learn that their password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

(e) Address Changes and Termination of Participation

Registered electronic filing users are required to notify the Court immediately of any address, telephone or email changes. This may be accomplished by the attorney updating their user account information via the Court's CM./ECF system or contacting the Clerk's office. Failure to comply may cause the Court to deactivate the user account of the electronic filer.

N.D.W. Va. LBR 5005-5 – Service of Documents and Orders by Electronic Means

(a) Filing and Service

1. Electronic submission of a document or order to the court's CM/ECF System which results in the production of a Notice of Electronic Filing constitutes filing and service of the document or order for all purposes under the Federal Rules of Bankruptcy Procedure and the Local Rules of this Court and constitutes entry on the docket kept by the Clerk pursuant to Fed. R. Bankr. P. 5003 and 9022.

2. The Notice of Electronic Filing, which includes a “hyperlink” to the filed document or order, is served via email to all electronic filers in a particular bankruptcy case. Each Notice of Electronic Filing lists who “Notices Will be Electronically Mailed to.” This information may also be obtained from the Court's CM/ECF system via an option under the Utilities menu (Utilities/Mailings/Mailing info for a Case). It is Counsel's responsibility to ensure that parties who will <u>not</u> receive the Notice of Electronic Filing from the Court's CM/ECF system be served by other means.

3. The Clerk's Office maintains a separate “manual” service list (mailing matrix) for each case. This mailing matrix is based on the creditors that were entered into the CM/ECF

system when the case was filed. Creditors may provide preferred addresses for noticing by registering with the National Creditor Registration Service at www.ncrsuscourts.com. Such preferred addresses will be substituted for the debtor-provided (uploaded) addresses on the mailing matrix.

(b) Timely Filing

Unless otherwise ordered by the court, a document filed electronically is timely if filed on or before midnight on the day it is due. A document that is not filed electronically is timely filed if received by the Clerk's Office before the close of business on the day it is due.

N.D.W. Va. LBR 5005-6 – Service of Process in Adversary Proceedings & Service of Subpoenas

Service pursuant to Fed. R. Bankr. P. 7004 and service of subpoenas under Fed. R. Bankr. P. 9016 must be accomplished as required under those applicable rules.

N.D.W. Va. LBR 5005-7 – Sealed Documents

A Motion to Seal should not include as an attachment the sensitive documents counsel is requesting be sealed. Parties may file sensitive documents with the Clerk in one of two ways: (1) File the sensitive documents electronically using the Sealed Documents docketing event; or (2) Deliver the sensitive documents to the Clerk of the Bankruptcy Court. Delivery may be by email only with the prior consent of the Clerk or the Clerk's designee. In either case, the sensitive documents will become part of the electronic docket for the case, but viewing will be restricted to Court personnel only.

Because only Court personnel will be able to view the sensitive documents, the moving party must conventionally serve the sensitive documents on other parties to the case that are entitled to receive them.

N.D.W. Va. LBR 5005-8 – Electronic Signatures

The attorney's login and password issued by this Court shall constitute his/her signature pursuant to Rule 9011.

N.D.W. Va. LBR 5005-9 – Text Only (Paperless) Orders

The Court may enter orders by a text only docket entry with no PDF document. The text only entry shall constitute the Court's order on the matter, and will carry the same force and effect as if the Judge had affixed his or her signature to a paper order. The Clerk's Office will send a paper copy of the Notice of Electronic Filing to non-CM/ECF filers in these instances.

N.D.W. Va. LBR 5005-10 – Technical Failures

If required to meet a filing deadline, a registered user is permitted to conventionally file a paper document only when the CM/ECF system is inaccessible or after notifying the Court when the registered user's computer system is inoperable. A registered user whose filing is made untimely as the result of a technical failure may seek, or the Court on its own motion may grant, appropriate relief. Parties are strongly encouraged to file documents electronically during normal business hours, in case a technical problem is encountered. No filing deadline shall be deemed to be extended due to technical problems except by Court order. The Clerk shall, whenever possible, post notice of any scheduled maintenance or technical problems which render the system incapable of receiving electronic filings. Registered users are expected to monitor these postings and take any required action necessary to ensure the timely filing of documents.

N.D.W. Va. LBR 5005-11 – Public Access

The public shall have electronic access to bankruptcy records at no charge in the Bankruptcy Clerk's Office. Electronic bankruptcy records can be reviewed in the Clerk's Office during regular business hours.

In addition, any person may access the official records of the Bankruptcy Court by becoming a registered user of the PACER (Public Access to Court Electronic records) System by calling 1-800-676-6856.

N.D.W. Va. LBR 5005-12 – Retention of Exhibits Admitted at Trial / Hearing

All exhibits that are admitted into evidence at trial or hearing shall be retained by the Clerk, unless required to be forwarded to an appellate Court for purposes of an appeal. If no appeal is timely taken, exhibits in the custody of the Clerk will ordinarily be returned to the party tendering the exhibit. Exhibits will be returned by certified mail/return receipt requested with an entry of the return being made on the internal case docket for the case.

N.D.W. Va. LBR 5006-1 – Certification of Copies of Papers

Upon written request and payment of the required fee by a party in interest, the Clerk's office may certify one or more pages of the electronic docket as true and correct copies of the electronic docket.

N.D.W. Va. LBR 5007-1 – Record of Proceedings and Transcripts

Transcripts must be submitted to the Court in portable document (.pdf) format. Electronic access to every transcript filed with the Court will initially be restricted to Court users and case participants who purchase the transcript from the Court reporter/transcriber. This restricted period will allow case participants the opportunity to review the transcript and file a request for redaction, requesting the mandatory redaction of personal data identifiers prior to the transcript being made available to the public. Any requests for redaction will indicate the location in the transcript of the personal data identifiers to be redacted and are due within 21 calendar days of the filing of the transcript, or longer if the Court so orders. During the 21-day period, or longer if the Court so orders, attorneys may file motions for any additional redactions to the transcript. The transcript will not be made electronically available until disposition of any such motions. The Court reporter or transcriber must, within 31 calendar days of the delivery of the transcript, or longer if the Court so orders, file a redacted version of the transcript with the Clerk of Court. The original unredacted electronic transcript shall be retained by the Clerk of Court.

N.D.W. Va. LBR 5009-1 – Final Reports & Closing of Cases

In the event that it appears to the Court or the Clerk that a Chapter 7, 12, or 13 case has

been fully administered, the Court or the Clerk may enter an order to show cause as to why the case should not be closed, and, in Chapters 12 and 13, why the plan should not be deemed completed and discharge entered. Failure to file a response by the time set forth in the Order to Show Cause may result in: a decree that the plan has been completed, the discharge being entered, and/or the closing of the case.

N.D.W. Va. LBR 5010-1 – Reopening Cases

(a) A motion to reopen a case shall be served on the United States trustee, the previously appointed trustee, and any party in interest affected by the reopening. The motion shall set forth the basis for the proposed reopening and shall contain information which would demonstrate that reopening is to correct an administrative error, administer assets, accord relief to the debtor, or for other cause. The motion should also allege whether the movant believes that a Chapter 7 trustee needs to be appointed if the Court grants the motion to reopen the case.

(b) Unless deferred or waived, the required filing fee shall be paid when a motion to reopen a case is filed. The fee may be deferred when a case trustee files a motion to reopen in an effort to discover or liquidate additional assets. If no additional assets are discovered, the fee shall be deemed waived. No fee is required to correct an administrative error or for actions related to the debtor's discharge or for such other reasons as determined by the Court or the Clerk. In a Chapter 7 case, the additional fee for payment to the trustee as set forth in item 11 of the Bankruptcy Court Miscellaneous Fee Schedule is also due at the time of filing the motion.

(c) A motion to reopen a case to include creditors inadvertently omitted from the original petition is governed by N.D.W. Va. LBR 1009-1(b).

N.D.W. Va. LBR 5011-1 – Withdrawal of Reference

(a) Form of Request; Place for Filing

A request for withdrawal in whole or in part of the reference of a case or proceeding referred to the Bankruptcy Judge, other than a *sua sponte* request by the Bankruptcy Judge, shall be by motion filed with the Clerk of the Bankruptcy Court. In addition all such motions

shall clearly and conspicuously state that "RELIEF IS SOUGHT FROM A UNITED STATES DISTRICT JUDGE.

(b) Time for Filing

Except as provided below as to adversary proceedings and contested matters, a motion to withdraw the reference of a whole bankruptcy case, or any part of a bankruptcy case, shall be served and filed at or before the time first scheduled for the meeting of creditors held pursuant to 11 U.S.C. § 341(a). Except as provided below as to contested matters, a motion to withdraw the reference of a whole adversary proceeding, or any part of an adversary proceeding, shall be served and filed on or before the date on which an answer, reply, or motion under Fed. R. Bankr. P. 7012 or 7015 is first due. A motion to withdraw the reference of a contested matter within a case shall be served and filed not later than 21 days after service of the motion, application, or objection which initiates the contested matter. Notwithstanding the foregoing, a motion to withdraw the reference may be served and filed not later than 21 days after service of any timely filed pleading or paper in which the basis for the motion first arises.

(c) Stay

The filing of a motion to withdraw the reference does not stay proceedings in the Bankruptcy Court.

(d) Designation of Record

The moving party shall serve and file, together with the motion to withdraw the reference, a designation of those portions of the record of the proceedings in Bankruptcy Court that the moving party believes will reasonably be pertinent to the District Court's consideration of the motion. Within 21 days after service of such designation of record, any other party may serve and file a designation of additional portions of the record. If the record designated by any party includes a transcript of any proceeding or a part thereof, that party shall immediately after filing the designation deliver to the reporter and file with the Clerk of the Bankruptcy Court a written request for the transcript and make satisfactory arrangements for payment of its cost. All parties shall take any other action necessary to enable the Clerk to assemble and transmit the record. The parties shall submit only that part or parts of the transcript of proceedings relevant to the issues raised in the motion to withdraw reference. If the issues

involve only questions of law, the parties may submit an agreed statement of facts of such part or parts of the record as are relevant to such questions of law, unless the District Judge considering the motion directs otherwise.

(e) Responses to Motion to Withdraw Reference; Reply

Opposing parties shall file with the Clerk of the Bankruptcy Court, and serve on all parties to the matter as to which withdrawal of the reference has been requested, their written responses to the motion to withdraw the reference, within 21 days after the motion to withdraw reference is filed. The moving party may serve and file a reply within 7 days after the filing of the response.

(f) Transmittal to and Proceedings in the District Court

When the record is complete for purposes of transmittal, but without awaiting the filing of any transcripts, the Clerk of the Bankruptcy Court shall promptly transmit to the Clerk of the District Court copies of the motion papers and the portions of the record designated. After the opening of a docket in the District Court, documents pertaining to the matter under review by the District Court shall be filed with the Clerk of the District Court, but all documents relating to other matters in the bankruptcy case or adversary proceeding or contested matter shall continue to be filed with the Clerk of the Bankruptcy Court.

N.D.W. Va. LBR 5071-1 – Continuances

(a) Court Hearings

A party requesting the continuance of a scheduled hearing shall state the reason for the requested continuance, the approximate length of time requested for the continuance, and whether or not the relevant parties to the hearing consent to the continuance. When submitted in writing, or when the Court requires the motion in writing, the motion shall be accompanied by a proposed order. ~~Oral requests for a continuance shall be made in the first instance to the Judge's Courtroom deputy, who may authorize the continuance.~~ The Judge, or the Clerk in the Judge's absence, may sign a submitted order granting a continuance. If the continuance is authorized, the moving/requesting party shall inform the relevant parties to the hearing that the hearing has been continued as soon as possible to prevent an unnecessary Court appearance.

(b) Creditor's Meetings

A request to continue a 11 U.S.C. § 341(a) meeting of creditors should be in conformity with N.D.W. Va. LBR 2003-1(c).

N.D.W. Va. LBR 5073-1 – Photographing and Broadcasting of Court Proceedings

The Local Rules of General Practice governing proceedings in the District Court for the Northern District of West Virginia regarding photographing and broadcasting of Court proceedings, currently located at LR Gen P 85.01, 85.02, and 85.03, applies to cases pending in the Bankruptcy Court. When visiting the Bankruptcy Court, attorneys are permitted to retain their cell phones, including those with camera features, but in no event should such devices be used in such a manner as to disrupt a Court proceeding.

PART VI – COLLECTION AND LIQUIDATION OF THE ESTATE

N.D.W. Va. LBR 6004-1 – Sales

(a) When Authorized

Except as provided in Fed. R. Bankr. P. 6004(a), no sale is authorized unless the sale has been approved by Court order.

(b) Disbursement of Sale Proceeds

Unless otherwise ordered by the Court, all proceeds of a sale shall be paid directly to any appointed trustee or the debtor in possession. No disbursement of proceeds shall be made without a specific order from the Court authorizing the disbursement, except that auctioneer fees and brokers' commissions may be paid without additional Court order, if payment is consistent with the terms of the order approving the sale or authorizing the retention of the auctioneer or broker.

(c) Report of Sale

Unless otherwise ordered by the Court, a report of sale required under Fed. R. Bankr. P. 6004(f)(1) is timely if filed within 21 days of the sale.

N.D.W. Va. LBR 6004-2 – Sales and Refinancing of Real Property in Chapter 13 Cases

In addition to the requirements of Fed. R. Bankr. P. 2002(c)(1), the notice of the sale or refinancing shall state: (a) whether the plan has been confirmed, and if so, whether the sale is pursuant to the terms of the confirmed plan; (b) the address of the property and whether it is the debtor's principal residence, (c) the total proposed sales price, or maximum amount to be secured by the refinancing, as the case may be, and the amount of existing secured debt to be paid; (d) the name and amount paid to any realtor, (e) any deductions from the sale or refinancing proceeds with an explanation thereof, (f) the amount of the sale or loan proceeds proposed to be applied to the Chapter 13 plan; (g) whether such payment will result in the full payment of allowed claims; and (h) if all allowed claims are not to be paid in full, the amount of the sale or loan proceeds that will be paid to the debtor.

N.D.W. Va. LBR 6007-1 – Abandonment

(a) When Effective

A notice or motion to abandon property shall be accompanied by a proposed order. No abandonment is effective unless approved by a Court order. The order approving or granting an abandonment may be entered *nunc pro tunc* to the date that the notice or motion for abandonment was filed, or, in appropriate circumstances, to a different date.

(b) Contents of Notice or Motion

A notice or motion to abandon property of the estate shall contain:

(1) A description of the property, and if real property, its designated address, if the property has an address;

(2) A statement of the present fair market value of the property, or an explanation as to why the statement is unnecessary or unavailable; and

(3) A statement of the payoff amounts of any encumbrances on the property as of the date of the filing of the notice or motion, or an explanation why the statement is unnecessary or unavailable; and

(4) A statement as to why the party believes that the property should be abandoned.

PART VII – ADVERSARY PROCEEDINGS

N.D.W. Va. LBR 7001-1 – Applicability of District Court Local Rules

The Local Rules of the District Court for the Northern District of West Virginia apply to adversary proceedings brought under Part VII of the Federal Rules of Bankruptcy Procedure unless the application of the Federal Rules of Bankruptcy Procedure or Part VII or IX of these Local Bankruptcy Rules require a different result.

N.D.W. Va. LBR 7003-1 – Trustee's Filing Fees

The payment of a filing fee for an adversary proceeding filed by a Chapter 7, 11, 12, or 13 trustee (but not a Chapter 11 debtor in possession) may be deferred until such time as the trustee prevails on the action. No filing fee is due should the trustee fail to prevail.

N.D.W. Va. LBR 7003-2 – Summons

On receipt of a complaint, the Clerk shall prepare a summons and transmit such summons to counsel for the plaintiff for service as required by law. Upon service of the complaint and summons, counsel shall file a conformed copy of the summons indicating proof of service.

N.D.W. Va. LBR 7003-3 – Service of Process

Service of process in an adversary proceeding shall be made on the debtor and the debtor's agent, where applicable, in accordance with Fed. R. Bankr. P. 7004. If the debtor is not represented by an attorney, all other documents subsequently filed in the matter shall be served on the debtor by first class mail.

N.D.W. Va. LBR 7005-1 Filing of Discovery Materials

(a) Non-Filing of Discovery

The following documents and responses shall be served on opposing counsel and parties, but not filed with the Court unless otherwise ordered: interrogatories, depositions, or requests to produce, inspect, or admit.

(b) Certificate of Service

Instead of filing discovery pleadings, the parties shall file a notice of filing with a certificate of service.

N.D.W. Va. LBR 7007-1 – Motion Practice in Adversary Proceedings

(a) Form of Motion

All motions, unless made in open Court during a hearing, shall be in writing and filed with the clerk. All written motions shall state with particularity the grounds for the relief requested in separately numbered paragraphs and shall be signed by the movant or the movant's counsel. Any letter that is received by the Court may, but need not be, considered as a motion by the Court. A motion will not be accepted by telephone or facsimile without the consent of the Clerk, or the Court. A proposed order should accompany the motion, which, if entered, would grant the relief sought in the motion. Such orders shall be prepared in accordance with N.D.W. Va. LBR 5005-2.

(b) Supporting Documentation

Dispositive motions shall be accompanied by a supporting memorandum, and by copies of depositions (or pertinent portions thereof), admissions, documents, affidavits, and other such material upon which the motion relies. A dispositive motion is one that seeks a final determination as to a claim or issue raised in pleading. No memorandum is required for non-dispositive motions; provided, however, that a motion for sanctions shall be accompanied by a supporting memorandum and exhibits. Examples of non-dispositive motions for which a supporting memorandum is not required include: motions for enlargement or extension of time, motions to amend clerical errors in a pleading, or motions to continue.

(c) Time of Filing

A dispositive motion deadline may be set forth in the parties pre-trial order submitted or imposed under N.D.W. Va. LBR 7016. Otherwise, a motion in an adversary proceeding may be filed at any time consistent with the Federal Rules of Bankruptcy Procedure.

(d) Response; Time for Response

Any party with standing may file a written response to the motion. The response may, but need not, be accompanied by affidavits and other supporting documents. A response, if any,

to a motion shall be filed within 21 days from the date of the filing of the motion with the Clerk, or three days before the date of the hearing on the motion, whichever is earlier, unless otherwise provided by these Local Rules, the Federal Rules of Bankruptcy Procedure, or Court order. The Court, in its discretion, may grant or deny a non-dispositive motion before the response deadline has expired (such as the grant or denial of a motion to continue).

(e) Reply

Within seven after the filing of a response to a motion, the movant may file a reply. A sur-reply is not authorized without Court permission. A party may, however, attached a sur-reply as an exhibit to the party's motion to allow the filing of a sur-reply.

(f) Hearing on Motion / Relief Without a Hearing

1. The Clerk shall set all hearing dates in consultation with the Court.

2. If no response is timely filed to a motion, unless otherwise provided by these Local Rules, the Federal Rules of Bankruptcy Procedure, or by order of this Court, motions shall be deemed submitted for adjudication. IN THE ABSENCE OF A TIMELY FILED WRITTEN RESPONSE TO A MOTION, THE COURT MAY DEEM THE MOTION ADMITTED, AND GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT THE NEED FOR A FURTHER HEARING.

3. The Court, in its discretion, may set any motion for hearing even in the absence of a filed response. Any party that intends to appear at such hearing to contest the relief sought in the motion should endeavor to file a written response with the Court at least three days before the scheduled hearing.

4. In the event that a timely response to a motion is filed pursuant to subsection (d), the motion is deemed submitted to the Court for adjudication on the day that the reply is filed, or when the time to file a reply has expired, whichever is earlier.

5. All motions in adversary proceedings shall be considered and decided by the Court on the pleadings, admissible evidence in the record, and motions, papers and supporting memoranda, without hearing or oral argument, unless ordered by the Court. Special considerations thought by counsel to be sufficient to warrant a hearing or oral argument may be brought to the Court's attention in the motion or response.

(g) Shorting Objection Periods and Requests for Emergency Relief

When a movant requests that the response period set forth in this Local Rule be shortened, or when the movant request emergency relief (any request to shorten the response period to less than ten days), the movant shall follow the procedures outlined in N.D.W. Va. LBR 9013-1(k) and (l).

N.D.W. Va. LBR 7016-1 – Pre-Trial Procedures; Represented Parties

(a) Parties to Submit a Joint Pre-Trial Scheduling Order

1. Within 30 days after the filing of an answer to the complaint, an answer to a cross-claim, or an answer to a third party complaint, whichever is later, the parties to an adversary proceeding shall submit a joint scheduling order setting forth all pertinent dates governing the development of the case with the exception of the final pre-trial hearing date and the trial date. The Clerk shall provide the final pre-trial hearing date and the trial date on receipt of the proposed scheduling order. If more than one defendant is named in the complaint, the joint scheduling order is not due until 30 days after the last such answer deadline, and any extension thereof, has expired.

2. The Court will enter its own scheduling order governing the case if no timely joint pre-trial scheduling order is submitted by the parties. Nothing shall prohibit the Court from altering the parties joint pre-trial scheduling order and adopting its own procedures.

3. The Court may post recommended pre-trial scheduling order forms on its website, www.wvnb.usCourts.gov. Use of the Court's forms are encouraged, but not required.

(b) Pre-Trial Conferences

The Court may schedule an adversary proceeding for a pre-trial conference at any time. The Court shall hold a final pre-trial conference, which is generally to be held within close proximity to the trial date scheduled by the Clerk, in consultation with the Court.

(c) Final Pre-Trial Conference

1. Pre-Trial Statement

Unless excused by the Court, each party shall file a pre-trial statement no later than two days before the date set by the Clerk for the final pre-trial conference. Copies of the statement shall be sent by the preparer to all other parties of record. The pre-trial statement

shall contain the following information:

A. A brief statement of the facts that the party proposes to prove in support of a claim or defense, together with a statement of legal theories and citations of authorities;

B. Any required pleading amendments;

C. Any pleaded, but abandoned, issues;

D. Stipulations of facts;

E. The details of the damage claimed or relief sought;

F. A witness list;

G. A list of documents and records to be offered in evidence by the party at the trial other than those expected to be used solely for impeachment, indicating which documents the party expects to introduce in evidence without the usual authentication;

H. A list of the names and specialities of experts that the party proposes to call as witnesses; and

I. A statement of any matter that must be resolved before trial.

2. Required Pre-Filing of Exhibits

Each party must pre-file all exhibits that the party intends to introduce into evidence, except for exhibits to be offered solely for rebuttal or impeachment. Each party must include in the pre-filed exhibits any report by an expert whom the party may call as a witness, or, if no report has been prepared, an affidavit by such expert as to the expert's direct testimony. The exhibits must be filed and received by the opposing party in the time set forth in the scheduling order, or within two days of the final pre-trial conference, whichever is earlier. A failure to pre-file exhibits may result in the exhibits being excluded from evidence. If opposing parties do not file written objections to pre-filed exhibits within the time set forth in the scheduling order, or within two days of trial, whichever is earlier, the Court may deem the exhibits as admitted into evidence.

N.D.W. Va. LBR 7016-2 – Pre-Trial Procedures; Unrepresented Parties

When a party to an adversary proceeding is not represented by counsel, the Court shall schedule a pre-trial conference after receipt of the answer to the adversary complaint. The

Court may relieve the parties of the pre-trial procedures set forth in N.D.W. Va. LBR 7016-1(c).

N.D.W. Va. LBR 7026-1 – Discovery

(a) Timely Written Discovery Requests

All discovery requests must be made at a sufficiently early date to assure that the time for response expires before any discovery deadlines set by the Court.

(b) Discovery to Proceed Despite Existence of Dispute

Unless otherwise ordered by the Court, a discovery dispute as to one matter does not justify delay in taking or responding to any other discovery.

(c) Discovery Stayed Pending Resolution of Motion Filed Under Fed. R. Civ. P. 12(b), Fed. R. Bankr. P. 7012

Unless otherwise ordered by the Court, the filing of a motion under Rule 12(b) stays discovery unless the movant presents matters outside the pleadings.

(d) Form of Responses

Responses to discovery must restate each request, and then be followed by the response, or a brief statement of the grounds for objection.

(e) Conference of Counsel Required

Counsel must confer concerning a discovery dispute and make good faith attempts to resolve their differences. The Court will not resolve a discovery dispute unless the moving party has filed a certificate stating:

1. The date, time, and place of the discovery conference, the names of all persons participating, and any unresolved issues remaining;

2. The moving party's attempts to hold such a conference without success..

N.D.W. Va. LBR 7026-2 – Discovery Guidelines

The Court expects all attorneys and parties to behave professionally and with Courtesy. Whenever possible, attorneys are expected to communicate with each other in good faith throughout the discovery process to resolve disputes without Court intervention. In an effort to facilitate the just, speedy, and inexpensive conduct of discovery, the Court adopts the discovery

guidelines that are attached to these Local Rules as Appendix E. The Discovery Guidelines in Appendix E may be used by the Court in resolving discovery disputes, including whether to award sanctions. The guidelines are not rules, and to the extent that a guideline may conflict with a rule adopted by the Court, or with the Court's order in a particular case, the rule or order will govern the proceeding.

N.D.W. Va. LBR 7040-1 – Scheduling of Trials

The Court will schedule trials as is convenient, giving priority to actions entitled to such priority by federal statute. Trials are generally held in the Division of the District where the case arose, unless otherwise agreed by the parties or ordered by the Court.

N.D.W. Va. LBR 7041-1 – Dismissal of Adversary Proceedings

A motion to dismiss an adversary proceeding shall state any compromise leading to the settlement of the dispute.

N.D.W. Va. LBR 7055-1 – Failure to Prosecute

When it appears to the Court that the principal issues have been adjudicated, or have become moot, or that the parties have shown no manifest interest in further prosecution of the action, the Court may direct the Clerk to give notice to counsel of record that the action will be dismissed 30 days after the date of the notice unless good cause of non-dismissal is shown. In the absence of good cause shown, the Clerk may administratively dismiss the action.

N.D.W. Va. LBR 7067-1 – Deposit and Withdraw of Court Registry Funds

(a) A motion to deposit monies in the registry of the Court shall contain: (1) the name, address, and telephone number of the person or entity paying the money into the registry of the Court; (2) the name and addresses of the person or other entity for whom the monies are being held; and (3) the sum of money and date to be paid into the Court's registry.

(b) The Clerk shall deposit in the registry of the Court any amount directed by Court order. No deposit may be made in the absence of a Court order.

(c) The Clerk shall deposit the funds in an interest bearing savings account.

(d) Monies may only be withdrawn on the presentation of a certified Court order. A proposed order directing that funds be disbursed from the Court's registry shall include: (1) the sum of money to be paid to the person or other entity receiving the money, along with any interest accrued thereon, less the Court's fee as authorized by the Judicial Conference of the United States (currently 10% of the interest earned); and (2) the name and addresses of the person or other entity receiving the money.

PART VIII – APPEALS TO THE DISTRICT Court OR BANKRUPTCY APPELLATE PANEL

N.D.W. Va. LBR 8001-1 – Appeals from Bankruptcy Court Orders

(a) A notice of appeal shall be in conformity with Official Bankruptcy Form B 17 and shall be accompanied by the prescribed filing fee.

(b) Within 21 days of the filing date of the notice of appeal, the bankruptcy judge whose order is the subject of the appeal may file a written opinion that supports the order being appealed, or that supplements any earlier written opinion or recorded oral bench ruling or opinion. The appellant shall provide a copy of the bankruptcy Court's opinion to the district Court.

N.D.W. Va. LBR 8005-1 – Stay Pending Appeal

Unless otherwise ordered, a supersedeas bond to stay execution of a judgment shall be in the amount of 125% of the judgment in order to cover the judgment, costs, interest, and any damages for delay.

PART IX – GENERAL PROVISIONS

N.D.W. Va. LBR 9004-1 – General Requirements of Form

(a) Legibility

Any document filed must be legible or it may be stricken by the Court on its own motion or by order granting a motion of any party in interest. If a document cannot be filed in a readable manner, it shall be accompanied by a readable, typed, attached substitute containing counsel's certification that the typed substitute contains, to the extent possible, the exact information set forth in the original document.

(b) Paper and Form

Pleadings and other papers shall conform to the standards set forth in N.D.W. Va. LBR 5005-2. Font size shall not be less than 10 point, and line spacing shall neither be more than double spaced nor less than single spaced.

(c) Caption

In designating the character of the paper, the caption shall clearly identify any other filed pleading or paper to which it relates.

(d) Page Limitations

The District Court's page limitations for motions / briefs do not apply in the Bankruptcy Court.

N.D.W. Va. LBR 9006-1 – Time Periods

Unless otherwise required by the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, if a motion to extend the time to take any action is filed before the expiration of the period presumed by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, these Local Rules, the Federal Rules of Civil Procedures as made applicable to bankruptcy proceedings, or by Court order, the time shall be automatically be extended until the Court acts on the motion without the necessity of a bridge order.

N.D.W. Va. LBR 9009-1 – Local Forms

The Clerk is authorized to post or remove, without notice, such local forms as the Court or the Clerk determine is necessary and/or helpful. Unless specifically authorized by these Local Rules, or as ordered by the Court, no local form prepared by the Court or the Clerk is

mandatory. All local forms are available on the Court's website: www.wvnb.usCourts.gov.

N.D.W. Va. LBR 9011-1 – Signing of Electronically Transmitted Pleadings, Motions, etc.

Any filing subject to Fed. R. Bankr. P. 9011 that is electronically filed by a registered CM/ECF user must be filed as either: (1) a document containing the signature of the person signing said document, or (2) a document displaying the name of the person signing said document, preceded by an "/s/" (e.g., "/s/ Jane Doe"). The electronic signature of the person on the document electronically filed shall constitute the signature of that person for purposes of Fed. R. Bankr. P. 9011.

N.D.W. Va. LBR 9011-2 – Sanctions for Failure to Follow Local Rules

Failure to comply with these Local Rules may result in the imposition of sanctions against the debtor, any party or party's counsel appearing before the Court, any person appearing without counsel, and/or any person acting in a fiduciary capacity or any other professional person appointed by the Court. Upon notice and hearing, sanctions may be imposed when it is determined that noncompliance with these Local Rules, or other applicable rules or statutes, has, without just cause, obstructed the effective conduct of the business of the Court or of the bankruptcy system. Such sanctions may include, without limitation:

1. All or part of a pleading or other paper being stricken or a defense being disallowed;
2. Stay of further proceedings;
3. All or part of an order being vacated;
4. Dismissal of the case or adversary proceeding;
5. Imposition of costs and expenses, including Court reporting fees and attorney's fees;
6. Denial of confirmation of a Chapter 11, 12, or 13 plan;
7. Reduction of attorney's fees;
8. A requirement for the completion of continuing education.

N.D.W. Va. LBR 9013-1 – Motion Practice in Non-Adversary Proceedings

(a) Motions Covered

For the purposes of this Rule, a "motion" filed in a case shall include any motion, application, notice, any other request for relief from the Court, or any proposed action to be taken under the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, or Local Bankruptcy Rules. The definition of "motion" shall not include a petition for relief under the Bankruptcy Code, a proof of claim or an objection to a proof of claim, or any proposed order submitted to the Court. Any letter that is received by the Court may, but need not be, considered as a motion by the Court.

(b) Form of Motion

1. All motions, unless made in open Court during a hearing, shall be in writing and filed with the clerk. All motions shall state with particularity the grounds for the relief requested in separately numbered paragraphs and shall be signed by the movant or the movant's counsel. Multiple requests for relief in a single motion may be allowed for filing purposes if those requests are based on identical facts or arise out of the same transaction. Multiple requests for relief not based on identical facts, or not arising out of the same transaction, shall be filed in separate documents. Authorities and arguments may be noted in a motion. A motion will not be accepted by telephone or facsimile without the consent of the judge or his designee.

2. A proposed order should accompany the motion, which if entered, would grant the relief sought in the motion. Such orders shall be prepared in accordance with N.D.W. Va. LBR 5005-2.

(c) Supporting Documentation

1. Generally

When allegations of facts on which a motion relies do not appear in the record, the source for those allegations of fact should be stated in the motion. Affidavits and supporting documentation evidencing facts that are not contained in the record are encouraged, but not required. If the affidavits and documents are not available at the time of the filing of the motion, then the moving party may move for an extension of time for filing affidavits and documents in accordance with subsection (h).

2. Motions to Lift Stay

Notwithstanding the foregoing, the Court may, in its discretion, deny any creditor's motion for relief from stay in connection with real or personal property that does not conform to the requirements of N.D.W. Va. LBR 4001-1(b).

(d) Service

1. In addition to the requirement for service found in the Federal Rules of Bankruptcy Procedure, all motions shall be served upon the debtor and the attorney for the debtor, as applicable. 2. When the requirement exists that service be made on the entire creditor body, the certificate of service may recite service on "all creditors listed on the mailing matrix on file in the Bankruptcy Clerk's Office as of (date)." A certificate of service shall be utilized when required. (See N.D.W. Va. L.B.R. 5005-5).

(e) Response; Time for Response

Any party with standing may file a written response to the motion. The response may, but need not, be accompanied by affidavits and other supporting documents. A response, if any, to a motion shall be filed within 21 days from the date of the filing of the motion, or 3 days before the date of the hearing on the motion, whichever is earlier, unless otherwise provided in the Federal Rules of Bankruptcy Procedure. A list of the types of motions (1) subject to the 21 day response rule, (2) referred directly to the Court for adjudication, and (3) subject to a different rule is located in Appendix F.

(f) Response Times for Motions for Relief from the Automatic Stay

Notwithstanding the 21-day response period provided in subparagraph (e), a response to a motion for relief from the automatic stay, if any, shall be filed within 14 days from the date of the filing of the motion, or 3 days before the hearing on the motion, whichever is earlier.

(g) Content of Response

1. All responses shall contain sufficient information to reasonably disclose the basis for the party's position and what specific issues are contested. A response may, but is not required to, contain affidavits and documents evidencing the facts stated in the response that do not appear in the record. If such affidavits and documents are not available at the time of the filing of the response, then the responding party may move for an extension of time for filing

affidavits and documents in accordance with subsection (h). The content of a response to a motion for relief from the automatic stay is governed by N.D.W. Va. LBR 4001-1(c).

2. If a response is not in compliance with this provision, the Court, in its discretion, may resolve the matter based on the moving party's submissions without a hearing, or take other action as the Court may deem appropriate.

(h) Extension of Time for Filing Supporting Affidavits and Documents

Upon proper motion accompanied by a proposed order, the Court may enter an ex parte order specifying the time within which supporting affidavits and documents must be filed, as applicable, pursuant to subsections (c) and (g), if it is shown in writing that such affidavits or documents are not available or cannot be filed contemporaneously with the motion or response. The time allowed to an opposing party for filing a response, as applicable, shall not begin to run until the expiration of such extended time period.

(i) Memorandum of Law

Unless otherwise ordered by the Court, all briefs or memoranda of law either in support of the motion or in opposition thereto are optional, and, thus, are not required. Any filed memorandum must be submitted at least 3 days before the hearing if one is set by the clerk's office, unless otherwise allowed in the discretion of the Court.

(j) Hearing on Motion / Relief Without a Hearing

1. The clerk shall set all hearing dates. IN THE ABSENCE OF A TIMELY FILED WRITTEN RESPONSE TO A MOTION, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT THE NEED FOR A FURTHER HEARING.

2. The Court, in its discretion, may set any motion for hearing even in the absence of any filed objections. Any party that intends to appear at the hearing to object should endeavor to file a written objection with the Court at least three days before the scheduled hearing.

(k) Shortening Objection Periods

1. A moving party may request that the Court shorten the applicable period to object to a prescribed action by filing a motion with the Court that states the necessity for shortening the objection period, and the proposed deadline for filing an objection to the action

prescribed in the underlying motion. If the movant requests that notice be shortened to less than ten days, then the movant should follow the procedures for requesting emergency relief in subsection (l), below. It is the responsibility of the moving party to contemporaneously serve both (a) the motion to shorten time to object, and (b) the motion seeking the underlying prescribed relief.

2. The Court, in its discretion, may grant ex-parte relief shortening the applicable objection period, and/or may set the motion for a hearing on an expedited basis. Immediately upon receipt of the order shortening time and/or setting the hearing, the movant shall serve the order, and shall serve notice of the time period in which to file objections to the extent that notice of the objection period is not adequately set forth in the Court's order.

(l) Emergency Relief

1. When the moving party requests that the Court shorten the applicable period to object to a prescribed action to less than ten days, then the movant shall file with the Court a motion for emergency relief. The motion for emergency relief shall plainly state the necessity for the objection period to be shortened to less than ten days. It is the responsibility of the moving party to contemporaneously serve both (a) the motion to shorten time to object, and (b) the motion seeking the underlying prescribed relief, which, if possible, should be served contemporaneously with the motion for emergency relief. Every effort must be made by the moving party to timely serve both motions, and, where appropriate, the motions should be transmitted to all applicable parties either by hand delivery, overnight delivery, facsimile, or other electronic transmission.

2. The Court, in its discretion, may grant ex-parte relief shortening the applicable objection period, and/or may set the motion for a hearing on an expedited basis. Immediately upon receipt of the order shortening time and/or setting the hearing, the movant shall serve notice of the hearing in a like manner and file with the Court a certificate of service. In instances where service of the motion for an emergency hearing, the motion seeking the underlying relief, and the order granting the emergency motion to shorten time, as applicable, may not provide sufficient time for parties in interest to respond or appear, counsel shall telephonically provide notice of the emergency hearing as soon as practicable, and reflect the

same in the certificate of service.

N.D.W. Va. LBR 9014-1 – Application of Part VII of the Federal Rules of Bankruptcy Procedure to Contested Matters

Unless otherwise ordered by the Court, Fed. R. Civ. P. 26(a) shall not apply in contested matters.

N.D.W. Va. LBR 9014-2 – Whether Hearing is Evidentiary or Preliminary

Unless otherwise ordered by the Court, hearings conducted telephonically are not evidentiary hearings. Except as otherwise provided for in the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, these Local Rules, Court order, or the notice of the hearing provided by the Clerk, all parties shall be prepared to present evidence and testimony at any scheduled Court hearing.

N.D.W. Va. LBR 9014-3 – Failure to Prosecute

N.D.W. Va. LBR 7055-1 applies in contested matters.

N.D.W. Va. LBR 9015-1 – Jury Trials

(a) A demand for a jury trial shall state whether the party consents to the trial being conducted by the bankruptcy Court.

(b) On motion, or on its own initiative, the Court may determine whether there is a right to a trial by jury of the issues for which a jury trial is demanded.

(c) Within the later of (1) the time required for the filing of a response to the pleading in which a jury demand is set forth, or (2) 14 days after the filing of a jury demand, any other party shall file a statement as to that party's consent to trial by the bankruptcy Court.

N.D.W. Va. LBR 9016-1 Subpoenas

Subpoenas for persons or documents for deposition, Rule 2004 examination, hearing, or trial, may be obtained from the Clerk's office, or by downloading the national form from the Court's website. As officers of the Court, attorneys may sign and

issue subpoenas. Witnesses are entitled to compensation pursuant to 28 U.S.C. § 1821.

N.D.W. Va. LBR 9019-1 – Compromise

In adversary proceedings, a motion to compromise must be filed both in the adversary proceeding, and in the main case if any party in the main case that is not already a party to the adversary proceeding would have standing to object to the proposed compromise.

N.D.W. Va. LBR 9019-2 – Alternative Dispute Resolution

Upon agreement of the parties, the Court may permit mediation of any issue in a case or proceeding. Upon the request of any party, or on its own initiative, the Court may permit or require mediation of any dispute in a case or proceeding. The terms and conditions of a proceeding in mediation shall be governed by the order scheduling the mediation.

N.D.W. Va. LBR 9027 – Removal

As a consequence of the district Court's general order of reference to the bankruptcy Court, and pursuant to 28 U.S.C. §§ 157, 1334, and 1452, and consistent with Fed. R. Bankr. P. 9027, all removal actions arising in, arising under, or related to a case under title 11 are referred to the United States Bankruptcy Court for the Northern District of West Virginia. The notice of removal shall be filed with the Clerk of the Bankruptcy Court and not the Clerk of the District Court. The fee for removing a case to bankruptcy Court is the same as the fee charged for the filing of an adversary proceeding.

N.D.W. Va. LBR 9029 – Local Rules

(a) The Supreme Court of the United States has, pursuant to 28 U.S.C. § 2075, prescribed rules of procedure in bankruptcy cases. Fed. R. Bankr. P. 9029 provides that Courts may adopt local rules that are not inconsistent with the Federal Rules of Bankruptcy Procedure. These Local Rules of the United States Bankruptcy Court for the Northern District of West Virginia are prescribed and promulgated as Local Rules governing practice and procedure before the Court. Where applicable, the Local

Rules of the District Court for the Northern District of West Virginia apply to bankruptcy proceedings.

(b) Any judge of this Court may suspend or modify a requirement or provision of any of these Local Rules in a particular case, adversary proceeding, or contested matter, on the Court's own motion or on the motion of a party.

(c) References to statutes, regulations, or rules shall be interpreted to include revisions and amendments made subsequent to the adoption of these Local Rules.

(d) The Court may adopt amendments to these Local Rules by entry of a General Order signed by all the bankruptcy judges of this District.

(e) With the adoption of these Local Rules, all General Orders entered after July 28, 1988, and before the effective date of these Local Rules, are rescinded.

(f) The appendixes attached to these Local Rules may be modified, deleted, or supplemented by the Court or the Clerk after the effective date of these Local Rules without notice.

N.D.W. Va. LBR 9034-1 – Transmittal of Pleadings, Motion Papers, Objections and Other Papers to the United States Trustee

Fed. R. Bankr. P. 9034 provides a list of pleadings, motions, objections or similar papers that must be served upon the office of the United States Trustee. Because the United States Trustee receives electronic service of the documents listed in Rule 9034, additional service by mail is not required. In addition to those items set forth in Rule 9034, the following documents should also be served upon the U. S. Trustee's office:

1. Initial operating reports
2. Monthly operating reports
3. Such other documents or information, including electronically formatted information, as the U. S. Trustee may from time to time designate, either generally with respect to all matters, or specifically with respect to an individual case.

N.D.W. Va. LBR 9050 – Procedures for Referring Cases that May Contain

Materially Fraudulent Statements in a Bankruptcy Schedule

In accordance with 18 U.S.C. § 158, whenever it appears to the Court or the Clerk that there exists a materially fraudulent statement in a bankruptcy schedule, the Clerk or the Court shall, without notice or entry on the record, refer the case to the Office of the United States Attorney.

APPENDIX A

When filing a bankruptcy case, the following documents should be filed in the order in which they are listed.

A. Verified petition with required exhibits;

B. Statement of Financial Affairs;

C. Schedules A-J, Summary of Schedules and Statistical Summary of Certain Liabilities;

D. Declaration Concerning Debtor's Schedules;

E. Attorney Fee Disclosure Statement;

F. Statement of Intention for individual Chapter 7 debtors;

G. Notice to Individual Consumer Debtor Under §342(b);

H. Statement of Current Monthly Income and Means-Test Calculation for individual debtors;

I. Certificate of Credit Counseling, Certificate of Exigent Circumstances or Motion for Waiver for individual debtors;

J. For corporate debtors, the Corporate Ownership Statement, a list of the 20 largest unsecured creditors, a copy of the resolution by the debtor's board of directors authorizing the filing of the bankruptcy petition, the designation of a responsible person as set forth in N.D.W. Va. LBR 1074-1, and, in Chapter 11 cases, a list of the debtor's equity security holders of each class showing the number and kind of interests registered in the name of each holder, and the last known address of place of business of each holder;

K. For partnership debtors, the certificate stating that the filing is authorized by the entity's partnership or operating agreement, or by all partners, as is required by N.D.W. Va. LBR 1002-4;

L. For limited liability company debtors, the certificate stating that the filing is authorized by the company's operating agreement, or by all managing members, as is required by N.D.W. Va. LBR 1002-4

M. For Chapter 7 business cases, a statement as to whether or not any related business continues to operate, and the name, current address and telephone number of the Chief Operating Officer or other contact person. Upon appointment of the interim trustee, the attorney for the debtor shall immediately notify the trustee of the operating business;

N. For individual debtors, copies of all payment advices or other evidence of payment received by the debtor(s) from any employer within 60 days before filing the petition as is required by N.D.W. Va. LBR 1007-2;

O. For chapter 13 debtors, the Chapter 13 Plan;

P. Mailing Matrix; See N.D.W. Va. LBR 1007-3.

APPENDIX B

The Chapter 7 Panel Trustees for this District are:

The Chapter 13 Standing Trustee for this District is:

APPENDIX C

GUIDELINES FOR SUBMITTING APPLICATIONS FOR COMPENSATION

The guidelines for submitting applications for compensation are available through the United States Department of Justice, Office of the United States Trustee, at the following web address: http://www.usdoj.gov/ust. Questions regarding the guidelines should be directed to the Regional Office of the United States Trustee. The Guidelines in effect as of the effective date of these Local Rules are listed below for the convenience of those appearing before the Court. Parties should consult with the United States Trustee website, or call the Regional Office of the United States Trustee, to obtain the most recent version of the Guidelines.

Guidelines for Reviewing Applications
for Compensation & Reimbursement of
Expenses filed under 11 U.S.C. § 330

(Reprinted at 28 C.F.R. Part 58, Appendix)

(a) General Information.

(1) The Bankruptcy Reform Act of 1994 amended the responsibilities of the United States Trustees under 28 U.S.C. 586(a)(3)(A) to provide that, whenever they deem appropriate, United States Trustees will review applications for compensation and reimbursement of expenses under section 330 of the Bankruptcy Code, 11 U.S.C. 101, et seq. ("Code"), in accordance with procedural guidelines ("Guidelines") adopted by the Executive Office for United States Trustees ("Executive Office"). The following Guidelines have been adopted by the Executive Office and are to be uniformly applied by the United States Trustees except when circumstances warrant different treatment.

(2) The United States Trustees shall use these Guidelines in all cases commenced on or after October 22, 1994.

(3) The Guidelines are not intended to supersede local rules of Court, but should be read as complementing the procedures set forth in local rules.

(4) Nothing in the Guidelines should be construed:

(i) To limit the United States Trustee's discretion to request additional information necessary for the review of a particular application or type of application or to refer any information provided to the United States Trustee to any investigatory or prosecutorial authority of the United States or a state;

(ii) To limit the United States Trustee's discretion to determine whether to file comments or objections to applications; or

(iii) To create any private right of action on the part of any person enforceable in litigation with the United States Trustee or the United States.

(5) Recognizing that the final authority to award compensation and reimbursement under section 330 of the Code is vested in the Court, the Guidelines focus on the disclosure of information relevant to a proper award under the law. In evaluating fees for professional services, it is relevant to consider various factors including the following: the time spent; the rates charged; whether the services were necessary to the administration of, or beneficial towards the completion of, the case at the time they were rendered; whether services were performed within a reasonable time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and whether compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in non-bankruptcy cases. The Guidelines thus reflect standards and procedures articulated in section 330 of the Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure for awarding compensation to trustees and to professionals employed under section 327 or 1103. Applications that contain the information requested in these Guidelines will facilitate review by the Court, the parties, and the United States Trustee.

(6) Fee applications submitted by trustees are subject to the same standard of review as are applications of other professionals and will be evaluated according to the principles articulated in these Guidelines. Each United States Trustee should establish whether and to what extent trustees can deviate from the format specified in these Guidelines without substantially affecting the ability of the United States Trustee to review and comment on their fee applications in a manner consistent with the requirements of the law.

(b) Contents of Applications for Compensation and Reimbursement of Expenses.

All applications should include sufficient detail to demonstrate compliance with the standards set forth in 11 U.S.C. § 330. The fee application should also contain sufficient information about the case and the applicant so that the Court, the creditors, and the United States Trustee can review it without searching for relevant information in other documents. The following will facilitate review of the application.

(1) Information about the Applicant and the Application. The following information should be provided in every fee application:

(i) Date the bankruptcy petition was filed, date of the order approving employment, identity of the party represented, date services commenced, and whether the applicant is seeking compensation under a provision of the Bankruptcy Code other than section 330.

(ii) Terms and conditions of employment and compensation, source of compensation, existence and terms controlling use of a retainer, and any budgetary or other limitations on fees.

(iii) Names and hourly rates of all applicant's professionals and paraprofessionals who billed time, explanation of any changes in hourly rates from those previously charged, and statement of whether the compensation is based on the customary compensation charged by comparably skilled practitioners in cases other than cases under title 11.

(iv) Whether the application is interim or final, and the dates of previous orders on interim compensation or reimbursement of expenses along with the amounts requested and the amounts allowed or disallowed, amounts of all previous payments, and amount of any allowed fees and expenses remaining unpaid.

(v) Whether the person on whose behalf the applicant is employed has been given the opportunity to review the application and whether that person has approved the requested amount.

(vi) When an application is filed less than 120 days after the order for relief or after a prior application to the Court, the date and terms of the order allowing leave to file at shortened intervals.

(vii) Time period of the services or expenses covered by the application.

(2) Case Status. The following information should be provided to the extent that it is known to or can be reasonably ascertained by the applicant:

(i) In a chapter 7 case, a summary of the administration of the case including all moneys received and disbursed in the case, when the case is expected to close,

and, if applicant is seeking an interim award, whether it is feasible to make an interim distribution to creditors without prejudicing the rights of any creditor holding a claim of equal or higher priority.

(ii) In a chapter 11 case, whether a plan and disclosure statement have been filed and, if not yet filed, when the plan and disclosure statement are expected to be filed; whether all quarterly fees have been paid to the United States Trustee; and whether all monthly operating reports have been filed.

(iii) In every case, the amount of cash on hand or on deposit, the amount and nature of accrued unpaid administrative expenses, and the amount of unencumbered funds in the estate.

(iv) Any material changes in the status of the case that occur after the filing of the fee application should be raised, orally or in writing, at the hearing on the application or, if a hearing is not required, prior to the expiration of the time period for objection.

(3) Summary Sheet. All applications should contain a summary or cover sheet that provides a synopsis of the following information:

(i) Total compensation and expenses requested and any amount(s) previously requested;

(ii) Total compensation and expenses previously awarded by the Court;

(iii) Name and applicable billing rate for each person who billed time during the period, and date of bar admission for each attorney;

(iv) Total hours billed and total amount of billing for each person who billed time during billing period; and

(v) Computation of blended hourly rate for persons who billed time during period, excluding paralegal or other paraprofessional time.

(4) Project Billing Format.

(i) To facilitate effective review of the application, all time and service entries should be arranged by project categories. The project categories set forth in Exhibit A should be used to the extent applicable. A separate project category should be used for administrative matters and, if payment is requested, for fee application preparation.

(ii) The United States Trustee has discretion to determine that the project billing

format is not necessary in a particular case or in a particular class of cases. Applicants should be encouraged to consult with the United States Trustee if there is a question as to the need for project billing in any particular case.

(iii) Each project category should contain a narrative summary of the following information:

(A) a description of the project, its necessity and benefit to the estate, and the status of the project including all pending litigation for which compensation and reimbursement are requested;

(B) identification of each person providing services on the project; and

(C) a statement of the number of hours spent and the amount of compensation requested for each professional and paraprofessional on the project.

(iv) Time and service entries are to be reported in chronological order under the appropriate project category.

(v) Time entries should be kept contemporaneously with the services rendered in time periods of tenths of an hour. Services should be noted in detail and not combined or "lumped" together, with each service showing a separate time entry; however, tasks performed in a project which total a de minimis amount of time can be combined or lumped together if they do not exceed .5 hours on a daily aggregate. Time entries for telephone calls, letters, and other communications should give sufficient detail to identify the parties to and the nature of the communication. Time entries for Court hearings and conferences should identify the subject of the hearing or conference. If more than one professional from the applicant firm attends a hearing or conference, the applicant should explain the need for multiple attendees.

(5) Reimbursement for Actual, Necessary Expenses. Any expense for which reimbursement is sought must be actual and necessary and supported by documentation as appropriate. Factors relevant to a determination that the expense is proper include the following:

(i) Whether the expense is reasonable and economical. For example, first class and other luxurious travel mode or accommodations will normally be objectionable.

(ii) Whether the requested expenses are customarily charged to non-bankruptcy clients of the applicant.

(iii) Whether applicant has provided a detailed itemization of all expenses including the date incurred, description of expense (e.g., type of travel, type of fare, rate, destination), method of computation, and, where relevant, name of the person incurring the expense and purpose of the expense. Itemized expenses should be identified by their nature (e.g., long distance telephone, copy costs, messengers, computer research, airline travel, etc.) and by the month incurred. Unusual items require more detailed explanations and should be allocated, where practicable, to specific projects.

(iv) Whether applicant has prorated expenses where appropriate between the estate and other cases (e.g., travel expenses applicable to more than one case) and has adequately explained the basis for any such proration.

(v) Whether expenses incurred by the applicant to third parties are limited to the actual amounts billed to, or paid by, the applicant on behalf of the estate.

(vi) Whether applicant can demonstrate that the amount requested for expenses incurred in-house reflect the actual cost of such expenses to the applicant. The United States Trustee may establish an objection ceiling for any in-house expenses that are routinely incurred and for which the actual cost cannot easily be determined by most professionals (e.g., photocopies, facsimile charges, and mileage).

(vii) Whether the expenses appear to be in the nature nonreimbursable overhead. Overhead consists of all continuous administrative or general costs incident to the operation of the applicant's office and not particularly attributable to an individual client or case. Overhead includes, but is not limited to, word processing, proofreading, secretarial and other clerical services, rent, utilities, office equipment and furnishings, insurance, taxes, local telephones and monthly car phone charges, lighting, heating and cooling, and library and publication charges.

(viii) Whether applicant has adhered to allowable rates for expenses as fixed by local rule or order of the Court.

Exhibit A--Project Categories

Here is a list of suggested project categories for use in most bankruptcy cases. Only one category should be used for a given activity. Professionals should make their best effort to be consistent in their use of categories, whether within a particular firm or by different firms working on the same case. It would be appropriate for all professionals to discuss the categories in advance and agree generally on how activities will be categorized. This list is not

exclusive. The application may contain additional categories as the case requires. They are generally more applicable to attorneys in chapter 7 and chapter 11, but may be used by all professionals as appropriate.

Asset Analysis and Recovery: Identification and review of potential assets including causes of action and non-litigation recoveries.

Asset Disposition: Sales, leases (s 365 matters), abandonment and related transaction work.

Business Operations: Issues related to debtor-in-possession operating in chapter 11 such as employee, vendor, tenant issues and other similar problems.

Case Administration: Coordination and compliance activities, including preparation of statement of financial affairs; schedules; list of contracts; United States Trustee interim statements and operating reports; contacts with the United States Trustee; general creditor inquiries.

Claims Administration and Objections: Specific claim inquiries; bar date motions; analyses, objections and allowances of claims.

Employee Benefits/Pensions: Review issues such as severance, retention, 401K coverage and continuance of pension plan.

Fee/Employment Applicants: Preparation of employment and fee applications for self or others; motions to establish interim procedures.

Fee/Employment Objections: Review of and objections to the employment and fee applications of others.

Financing: Matters under ss 361, 363 and 364 including cash collateral and secured claims; loan document analysis.

Litigation: There should be a separate category established for each matter (e.g., XYZ Litigation).

Meetings of Creditors: Preparing for and attending the conference of creditors, the s 341(a) meeting and other creditors' committee meetings.

Plan and Disclosure Statement: Formulation, presentation and confirmation; compliance with the plan confirmation order, related orders and rules; disbursement and case closing activities, except those related to the allowance and objections to allowance of claims.

Relief From Stay Proceedings: Matters relating to termination or continuation of automatic stay under s 362.

The following categories are generally more applicable to accountants and financial advisors, but may be used by all professionals as appropriate.

Accounting/Auditing: Activities related to maintaining and auditing books of account, preparation of financial statements and account analysis.

Business Analysis: Preparation and review of company business plan; development and review of strategies; preparation and review of cash flow forecasts and feasibility studies.

Corporate Finance: Review financial aspects of potential mergers, acquisitions and disposition of company or subsidiaries.

Data Analysis: Management information systems review, installation and analysis, construction, maintenance and reporting of significant case financial data, lease rejection, claims, etc.

Litigation Consulting: Providing consulting and expert witness services relating to various bankruptcy matters such as insolvency, feasibility, avoiding actions, forensic accounting, etc.

Reconstruction Accounting: Reconstructing books and records from past transactions and bringing accounting current.

Tax Issues: Analysis of tax issues and preparation of state and federal tax returns.

Valuation: Appraise or review appraisals of assets.

SAMPLE SUMMARY SHEET

Fees Previously Requested $ NAME OF APPLICANT:
Fees Previously Awarded $
In re
CHAPTER Expenses Previously Requested $ ROLE IN THE CASE:
Expenses Previously Awarded $
Case No.
Retainer Paid $ CURRENT APPLICATION
Fees Requested
Expenses Requested
$
$

Debtor.

FEE APPLICATION

NAMES OF PROFESSIONALS/ PARAPROFESSIONALS YEAR ADMITTED TO PRACTICE HOURS BILLED
CURRENT APPLICATION
RATE
TOTAL FOR APPLICATION

PARTNERS

ASSOCIATES

PARAPROFESSIONALS

TOTAL BLENDED HOURLY RATE (Excluding Paraprofessionals) $

TOTAL

GUIDELINES FOR REVIEWING APPLICATIONS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FILED UNDER 11 U.S.C. §330

(Appendix A to 28 C.F.R.§ 58)

(a) General Information.

(1) The Bankruptcy Reform Act of 1994 amended the responsibilities of the United States Trustees under 28 U.S.C. 586(a)(3)(A) to provide that, whenever they deem appropriate, United States Trustees will review applications for compensation and reimbursement of expenses under section 330 of the Bankruptcy Code, 11 U.S.C. 101, et seq. ("Code"), in accordance with procedural guidelines ("Guidelines") adopted by the Executive Office for United States Trustees ("Executive Office"). The following Guidelines have been adopted by the Executive Office and are to be uniformly applied by the United States Trustees except when circumstances warrant different treatment.

(2) The United States Trustees shall use these Guidelines in all cases commenced on or after October 22, 1994.

(3) The Guidelines are not intended to supersede local rules of Court, but should be read as complementing the procedures set forth in local rules.

(4) Nothing in the Guidelines should be construed:

(i) To limit the United States Trustee's discretion to request additional information necessary for the review of a particular application or type of application or to refer any information provided to the United States Trustee to any

investigatory or prosecutorial authority of the United States or a state;

(ii) To limit the United States Trustee's discretion to determine whether to file comments or objections to applications; or

(iii) To create any private right of action on the part of any person enforceable in litigation with the United States Trustee or the United States.

(5) Recognizing that the final authority to award compensation and reimbursement under section 330 of the Code is vested in the Court, the Guidelines focus on the disclosure of information relevant to a proper award under the law. In evaluating fees for professional services, it is relevant to consider various factors including the following: the time spent; the rates charged; whether the services were necessary to the administration of, or beneficial towards the completion of, the case at the time they were rendered; whether services were performed within a reasonable time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and whether compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in non-bankruptcy cases. The Guidelines thus reflect standards and procedures articulated in section 330 of the Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure for awarding compensation to trustees and to professionals employed under section 327 or 1103. Applications that contain the information requested in these Guidelines will facilitate review by the Court, the parties, and the United States Trustee.

(6) Fee applications submitted by trustees are subject to the same standard of review as are applications of other professionals and will be evaluated according to the principles articulated in these Guidelines. Each United States Trustee should establish whether and to what extent trustees can deviate from the format specified in these Guidelines without substantially affecting the ability of the United States Trustee to review and comment on their fee applications in a manner consistent with the requirements of the law.

(b) Contents of Applications for Compensation and Reimbursement of Expenses. All applications should include sufficient detail to demonstrate compliance with the standards set forth in 11 U.S.C. s 330. The fee application should also contain sufficient information about the case and the applicant so that the Court, the creditors, and the United States Trustee can review it without searching for relevant information in other documents. The following will facilitate review of the application.

(1) Information about the Applicant and the Application. The following

information should be provided in every fee application:

(i) Date the bankruptcy petition was filed, date of the order approving employment, identity of the party represented, date services commenced, and whether the applicant is seeking compensation under a provision of the Bankruptcy Code other than section 330.

(ii) Terms and conditions of employment and compensation, source of compensation, existence and terms controlling use of a retainer, and any budgetary or other limitations on fees.

(iii) Names and hourly rates of all applicant's professionals and paraprofessionals who billed time, explanation of any changes in hourly rates from those previously charged, and statement of whether the compensation is based on the customary compensation charged by comparably skilled practitioners in cases other than cases under title 11.

(iv) Whether the application is interim or final, and the dates of previous orders on interim compensation or reimbursement of expenses along with the amounts requested and the amounts allowed or disallowed, amounts of all previous payments, and amount of any allowed fees and expenses remaining unpaid.

(v) Whether the person on whose behalf the applicant is employed has been given the opportunity to review the application and whether that person has approved the requested amount.

(vi) When an application is filed less than 120 days after the order for relief or after a prior application to the Court, the date and terms of the order allowing leave to file at shortened intervals.

(vii) Time period of the services or expenses covered by the application.

(2) Case Status. The following information should be provided to the extent that it is known to or can be reasonably ascertained by the applicant:

(i) In a chapter 7 case, a summary of the administration of the case including all moneys received and disbursed in the case,

when the case is expected to close, and, if applicant is seeking an interim award, whether it is feasible to make an interim distribution to creditors without prejudicing the rights of any creditor holding a claim of equal or higher priority.

(ii) In a chapter 11 case, whether a plan and disclosure statement have been filed and, if not yet filed, when the plan and disclosure statement are expected to be filed; whether all quarterly fees have been paid to the United States Trustee; and whether all monthly operating reports have been filed.

(iii) In every case, the amount of cash on hand or on deposit, the amount and nature of accrued unpaid administrative expenses, and the amount of unencumbered funds in the estate.

(iv) Any material changes in the status of the case that occur after the filing of the fee application should be raised, orally or in writing, at the hearing on the application or, if a hearing is not required, prior to the expiration of the time period for objection.

(3) Summary Sheet. All applications should contain a summary or cover sheet that provides a synopsis of the following information:

(i) Total compensation and expenses requested and any amount(s) previously requested;

(ii) Total compensation and expenses previously awarded by the Court;

(iii) Name and applicable billing rate for each person who billed time during the period, and date of bar admission for each attorney;

(iv) Total hours billed and total amount of billing for each person who billed time during billing period; and

(v) Computation of blended hourly rate for persons who billed time during period, excluding paralegal or other paraprofessional time.

(4) Project Billing Format.

(i) To facilitate effective review of the application, all time

and service entries should be arranged by project categories. The project categories set forth in Exhibit A should be used to the extent applicable. A separate project category should be used for administrative matters and, if payment is requested, for fee application preparation.

(ii) The United States Trustee has discretion to determine that the project billing format is not necessary in a particular case or in a particular class of cases. Applicants should be encouraged to consult with the United States Trustee if there is a question as to the need for project billing in any particular case.

(iii) Each project category should contain a narrative summary of the following information:

(A) a description of the project, its necessity and benefit to the estate, and the status of the project including all pending litigation for which compensation and reimbursement are requested;

(B) identification of each person providing services on the project; and

(C) a statement of the number of hours spent and the amount of compensation requested for each professional and paraprofessional on the project.

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(ii) Whether the requested expenses are customarily charged to non-bankruptcy clients of the applicant.

(iii) Whether applicant has provided a detailed itemization of all expenses including the date incurred, description of expense (e.g., type of travel, type of fare, rate, destination), method of computation, and, where relevant, name of the person incurring the expense and purpose of the expense. Itemized expenses should be identified by their nature (e.g., long distance telephone, copy costs, messengers, computer research, airline travel, etc.) and by the month incurred. Unusual items require more detailed explanations and should be allocated, where practicable, to specific projects.

(iv) Whether applicant has prorated expenses where appropriate between the estate and other cases (e.g., travel expenses applicable to more than one case) and has adequately explained the basis for any such proration.

(v) Whether expenses incurred by the applicant to third parties are limited to the actual amounts billed to, or paid by, the applicant on behalf of the estate.

(vi) Whether applicant can demonstrate that the amount requested for expenses incurred in-house reflect the actual cost of such expenses to the applicant. The United States Trustee may establish an objection ceiling for any in-house expenses that are routinely incurred and for which the actual cost cannot easily be determined by most professionals (e.g., photocopies, facsimile charges, and mileage).

(vii) Whether the expenses appear to be in the nature nonreimbursable overhead. Overhead consists of all continuous administrative or general costs incident to the operation of the applicant's office and not particularly attributable to an individual

client or case. Overhead includes, but is not limited to, word processing, proofreading, secretarial and other clerical services, rent, utilities, office equipment and furnishings, insurance, taxes, local telephones and monthly car phone charges, lighting, heating and cooling, and library and publication charges.

(viii) Whether applicant has adhered to allowable rates for expenses as fixed by local rule or order of the Court.

APPENDIX D

PRESUMPTIVELY REASONABLE ATTORNEY'S FEES

APPENDIX E – DISCOVERY GUIDELINES

(a) Expert Witness Fees

Unless counsel agree that each party will pay its own experts, the party taking an expert witness's deposition ordinarily pays the expert's fee for time spent in the deposition and for related travel. Accordingly, counsel for the party that designated the expert witness should try to assure that the fee charged by the expert to the party taking the deposition is fair and reasonable. In the event that a dispute arises as to the reasonableness or other aspects of an expert's fee, counsel should promptly confer and attempt in good faith to resolve the dispute without the involvement of the Court. If counsel are unsuccessful, the expert's deposition shall proceed on the date noted, unless the Court orders otherwise. The dispute regarding payment shall be brought to the Court's attention promptly. The factors that the Court may consider in determining whether an expert's fee is reasonable include, but are not limited to: (1) the expert's area of expertise; (2) the expert's education and training; (3) the fee being charged to the party who designated the expert; (4) the fees ordinarily charged by the expert for non-litigation services, such as office consultations with patients or clients.

(b) Scheduling Depositions

Parties are expected to make a good faith effort to coordinate deposition dates with opposing counsel, parties, and non-party deponents before noticing a deposition. Before agreeing to a deposition date, the attorney is expected to clear the date with the attorney's client, if the client is the deponent or wishes to attend the deposition. Also, the attorney is expected to clear the deposition date, time, and place with any witness that the attorney agrees to attempt to

produce without the need to have the witness served with a subpoena. Any agreed-on deposition date is presumptively binding. An attorney seeking to change the deposition date has a duty to coordinate a new date before changing the agreed date.

(c) Deposition Questioning, Objections, and Procedure

1. Attorneys should not intentionally ask a witness a question that misstates or mischaracterizes the witness's previous answer.

2. During a deposition, it is presumptively improper for an attorney to make objections that are not consistent with Fed. R. Civ. P. 30. Objections should be stated simply, concisely, and non-argumentatively as possible to avoid coaching or making suggestions to the deponent, and to minimize interruptions in the questioning of a deponent. (E.g., "objection, leading"; "objection, asked and answered"; "objection, compound question"; "objection, form"). If an attorney desires to make an objection for the record during the taking of a deposition that reasonably could have the effect of coaching or suggesting to the deponent how to answer, then the deponent, at the request of any of the attorneys or unrepresented parties present, shall be excused from the deposition while the objection is made.

3. An attorney should not repeatedly ask the same or substantially identical question of the deponent if the question has already been asked and fully and responsively answered by the deponent. On objection by counsel for the deponent, or by the deponent if unrepresented, it is presumptively improper for an attorney to continue to ask the same of substantially identical question of a witness unless the previous answer was evasive or incomplete.

4. It is presumptively improper to direct a witness not to answer a question during the taking of a deposition unless it is under the circumstances permitted by Fed. R. Civ. P. 30. It is also presumptively improper to ask questions clearly beyond the scope of discovery permitted by Fed. R. Civ. P. 26, particularly of a personal nature, and continuing to do so after an objection shall be evidence that the deposition is being conducted in bad faith or in an effort to annoy, embarrass, or oppress the deponent.

5. On request, the objecting party should supply a basis for an objection.

6. While the interrogation of the deponent is in progress, it is presumptively

improper for either the attorneys or the deponent to initiate a private conversation except for the purpose of determining whether a privilege should be asserted.

7. During a break in the deposition, no one should discuss with the deponent the substance of the deponent's prior testimony. Counsel for the deponent may discuss with the deponent whether a privilege should be asserted, and may otherwise engage in discussions not regarding the substance of the witness's prior testimony.

8. Unless otherwise ordered by the Court, the following persons, without any advance notice, may attend a deposition: individual parties, a representative of non-individual parties, and expert witnesses of parties. In all other instances, counsel shall notify other parties not later than 7 days before the taking of the deposition if counsel desires to have a non-party present during the taking of a deposition. If the parties are unable to agree to the attendance of this person, then the person shall not be entitled to attend the deposition without a Court order. Unless ordered by the Court, a dispute as to who may attend a deposition is not grounds for delaying the deposition. All persons present during the taking of a deposition should be identified on the record before the deposition begins.

9. Except for the person recording the deposition in accordance with Fed. R. Civ. P. 30(b), during the taking of the deposition no one may record the testimony without the consent of the deponent and all parties in attendance, unless otherwise ordered by the Court.

(d) Making a Record of Improper Conduct During a Deposition

On the request of any attorney or party not represented by an attorney, or the deponent if unrepresented by an attorney, the person recording the deposition shall allow a record to be made by the requesting person of conduct of any attorney, party, or person attending the deposition which violates these guidelines, the Federal Rules of Civil Procedure, or the Local Rules of this Court.

(e) Delay in Responding to Discovery Requests

1. Interrogatories, Requests for Production of Documents, and Request for Admission of Facts and Genuineness of Documents

A. Attorneys shall make a good faith effort to respond to discovery requests within the time prescribed by the Federal Rules of Civil Procedure, as made applicable to

bankruptcy proceedings.

B. Absent exigent circumstances, attorneys seeking additional time to respond to discovery requests shall contact opposing counsel as soon as practical after receipt of the discovery requests, but not later than three days before the response is due. In multiple party cases, the attorney seeking additional time shall contact the party propounding the discovery request.

C. A request for additional time that does not conflict with the scheduling deadline imposed by the Federal Rules of Civil Procedure, the Local Rules of this Court, or a Court order, should not be unreasonably refused. If a request for additional time is granted, the requesting party shall promptly prepare a writing that memorializes the agreement, and shall serve that writing on all parties, but need not file a copy of the agreement with the Court for approval.

D. Unless otherwise provided, no stipulation which modifies a Court-imposed deadline shall be effective unless the Court approves the stipulation.

2. Depositions

Ten days notice shall be deemed to be a reasonable notice within the meaning of Fed. R. Civ. P. 30(b)(1) for noticing a deposition.

(g) Answers to Interrogatories and Responses to Requests for Production of Documents

1. A party may object to an interrogatory, document request, or any part thereof while simultaneously providing a partial or incomplete answer. If a partial or incomplete answer is provided, the answering party shall state that the answer is partial or incomplete.

2. No part of an interrogatory or production request should be left unanswered merely because an objection is interposed to another part of the interrogatory or document request.

3. In addition to paper copies, parties are encouraged, but not required, to exchange discovery requests and responses in electronic format so as to reduce the clerical effort required to prepare responses and motions.

APPENDIX F

Documents Receiving a Notice of 21 Days to Object or Else the Relief Requested may be Granted

Application for Compensation
Application to Employ
Application for Administrative Expenses
Trustee's Final Report
Motion to /for:

- Abandon
- Accounting
- Adequate Protection or Increase Adequate Assurance Payment (unless bundled with a § 362 motion, in which case the notice is 14 days)
- Add a Party
- Allow a Claim
- Allow Direct Plan Payments
- Amend a Complaint / Answer
- Appoint a Trustee
- Appoint a Consumer Ombudsman
- Approve Settlement
- Assume Lease or Executory Contract
- Avoid Liens under § 522(f) (household goods, judicial liens)
- Borrow
- Change Venue
- Compromise Controversy
- Compel
- Compensation to Principals
- Consolidate Cases
- Contempt

Convert Case from Chapter 7 to 11 or 13
Convert Case from 11 to 7 or 13
Damages for Creditor Misconduct
Deconsolidate Case Association
Determine Secured Status
Determine Tax Liability
Determine Value of Property
Definite Statement
Distribute
Delay Discharge (unless filed by the debtor)
Dismiss a Case (including Chapter 13 and not including § 524(i) dismissals or dismissals under § 1112)
Dismiss Adversary Proceeding when the plaintiff is the estate and funds could be realized for creditors)
Dismiss Case for Abuse under § 707
Dismiss Case for Failure to Make Plan Payments
Dismiss a Party
Employ Chapter 11 Counsel
Examine Attorney Compensation
Exemption from Means Test
Extend Exclusivity Period
Extend Plan Payments
Extend Time to Object to Discharge and/or Dischargeability
Exemption from Credit Counseling
Exemption from Course in Financial Management
File a Petition out of Venue
Intervene
Joint Administration
Moratorium
Modify Plan
Pay Chapter 11 Employees
Quash
Reconsider Dismissal of Case
Reconsider
Reclassify Claims
Redeem
Reinstate Case
Reject Executory Contract / Lease
Remand
Remove Debtor as Debtor-in-Possession
Reopen
Resume Billing Statements
Reinstatement of Retiree Benefits
Remove Professional

Remove Trustee
Sanctions under 28 U.S.C. § 1927
Sanctions for violation of stay (when brought by motion)
Sanctions for Debtor's Attorney
Sanctions for Violation of the Discharge Injunction (when brought by motion)
Summary Judgment
Sell Free and Clear
Stay Pending Appeal
Suspend Plan Payments
Sever Case
Termination or Absence of Stay
Transfer Case
Turnover of Property
Access to Tax Documents
Use of Cash Collateral
Continuation of Utility Service
Vacate
Vacate Discharge (when brought by motion)

Motions /Applications Referred Directly to Judge / Clerk

Application to Deposit Unclaimed Funds
Application to Proceed In Forma Pauperis
Application to Pay Filing Fee in Installments
Application to Withdraw Monies from Registry
Application for Writ to Appellate Court

Motion to / for:

2004 Examination (when not noticed like a deposition under N.D.W.V. LBR 2004-1)
Convert Case from Chapter 13 to Chapter 11
Convert Case from Chapter 13 to 7
Consolidate for Hearing
Continue Hearing
Defer Filing Fee
Delay discharge (only if filed by the Debtor)
Deposit Funds in Court Registry
Dismiss / Withdraw a Document
Dismiss a Case under § 524(i)
Dismiss Adversary Proceeding when filed by an entity other than the estate, who is not acting on behalf of the estate
Enlarge Time

Expedite Hearing
Expunge
Extend Time to Appeal
Extend Time for Credit Counseling
Extend Deadline to File Schedules
Extend Time to Meet a Court Imposed Deadline
Final Decree
Hardship Discharge
Limit Notice
Leave to Appeal
Pro Hac Vice
Protective Order
Reaffirmation
Recusal
Restrict Public Access
Seal
Substitute Attorney
Transfer Case
Withdraw as Attorney
Waive Appearance
Waive Filing Fee (not IFP)

Motions / Applications Subject to a Different Rule

Motion to Dismiss under § 1112 (14 days; hearing must be set within 30 days of filing motion if a timely response is filed under § 1112(b)(3)).
Motion for relief from stay (14 days)
Motion for adequate protection (14 days when bundled with a § 362 motion)
File an Amended Proof of Claim (no notice required)
Amend a filed motion (no notice required)
Appointment of a Committee (when a party requests the Court – not the UST – to appoint the Committee) (set directly for a hearing)
Cancellation of § 341 meeting (done by UST)
Continue Meeting of Creditors (done by UST)
U.S. Trustee's Statement that a Motion to Dismiss is not Appropriate (do nothing)
Entry of Default / Default Judgment
Disallow / Objection to Claim (30 days)
Extend the Automatic Stay Under § 362(c) (hearing must be held within the 30 day period preceding the petition date)
Extend Time to File a Complaint
Preliminary Injunction / Temporary Restraining Order
Prohibit Use of Cash Collateral (set directly for a hearing)

Relief from co-debtor stay (14 days)
Set last day to file proofs of claim (Chapter 11 only)
Approve disclosure Statement (25 days)
Approve Chapter 11, 12, or 13 plan (25 days)

APPENDIX G

Address of the Regional Office of the United States Trustee: